

Gault at 50: Ensuring Counsel for LGBTQ Youth in the Juvenile Justice System



Hosted by the Coalition for Juvenile Justice
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(Moderator)

What is *In Re Gault*? ***Gault* at 50 Campaign**

Christina J. Gilbert, Esq.





NATIONAL JUVENILE DEFENDER CENTER



#GaultAt50 #DefendChildren

In re Gault, 387 U.S. 1 (1967)

The landmark U.S. Supreme Court decision that ensured the right to a lawyer for children accused of crimes in juvenile court.

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Gault, cont.

"The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of proceedings, and to ascertain whether he has a defense and to prepare and submit it."

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1
Million

Children are charged
with crimes in
delinquency court over
one million times
annually.

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Do Youth Really Need an Attorney?

Yes!

"Access to counsel for children means more than representation in court. It means having an advocate who will value clients' stories, hear their concerns, and fight for fair and equitable outcomes throughout the entirety of the case. Juvenile defense attorneys are uniquely positioned to uphold young people's rights and bring to light abuse and mistreatment that youth might otherwise suffer in silence."

- Gault at 50: Ensuring Counsel for LGBTQ Youth in the Juvenile Justice System, Huffington Post Blog, June 13, 2016

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The Crisis

- 1 Lack of meaningful access to counsel
- 2 Inadequate juvenile defense delivery systems
- 3 Practices inconsistent with adolescent development

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31

Number of states that have no laws saying how young is too young to prosecute a child.

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1

Every child should be provided a juvenile defense attorney at the earliest possible moment.

2

Every child should be automatically eligible for a publicly funded juvenile defense attorney.

3

A child's juvenile defense attorney should represent the child throughout the time the child is under the jurisdiction or supervision of the juvenile justice system, from arrest through post-disposition, which may include incarceration, probation, and/or parole, related appeals, and reentry.

4

Every juvenile defense attorney must receive specialized training and support to be an effective advocate for children.

5

Publicly funded defense systems must provide the necessary training, leadership, funding, tools, and resources to develop juvenile defenders with specialized knowledge and expertise.

Statement of Principles

Justice demands that all children in juvenile court have meaningful access to counsel.

It's time to fulfill the promise of *Gault*.

Pledge your support at www.gaultat50.org.

#GaultAt50 #DefendChildren

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gaultat50.org



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Why *Gault* Matters for LGBTQ Youth

What Do We Know About LGBTQ Youth in the Juvenile Justice System

Naomi Goldberg



UNJUST: HOW THE BROKEN CRIMINAL JUSTICE SYSTEM FAILS LGBT PEOPLE

February 2016



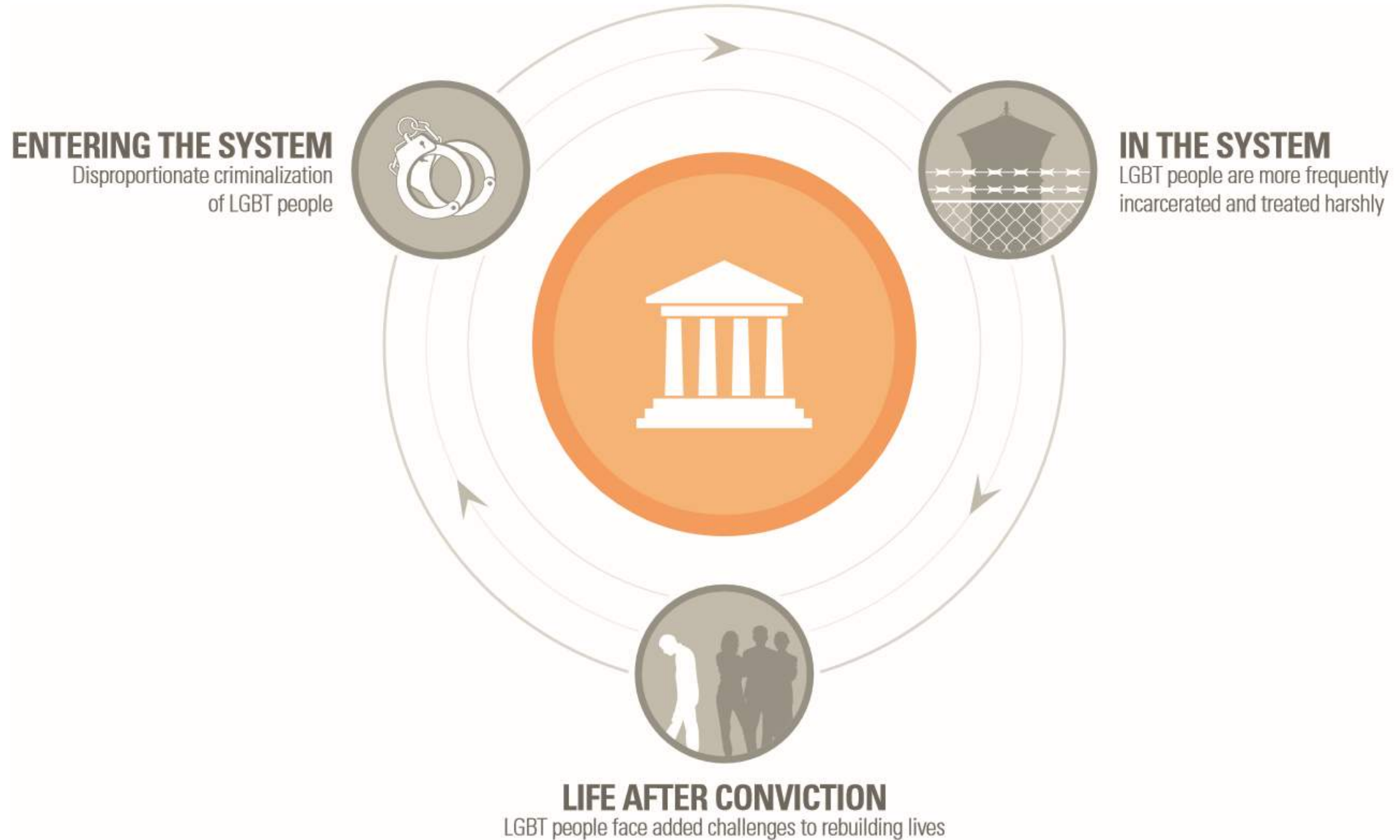
Authors



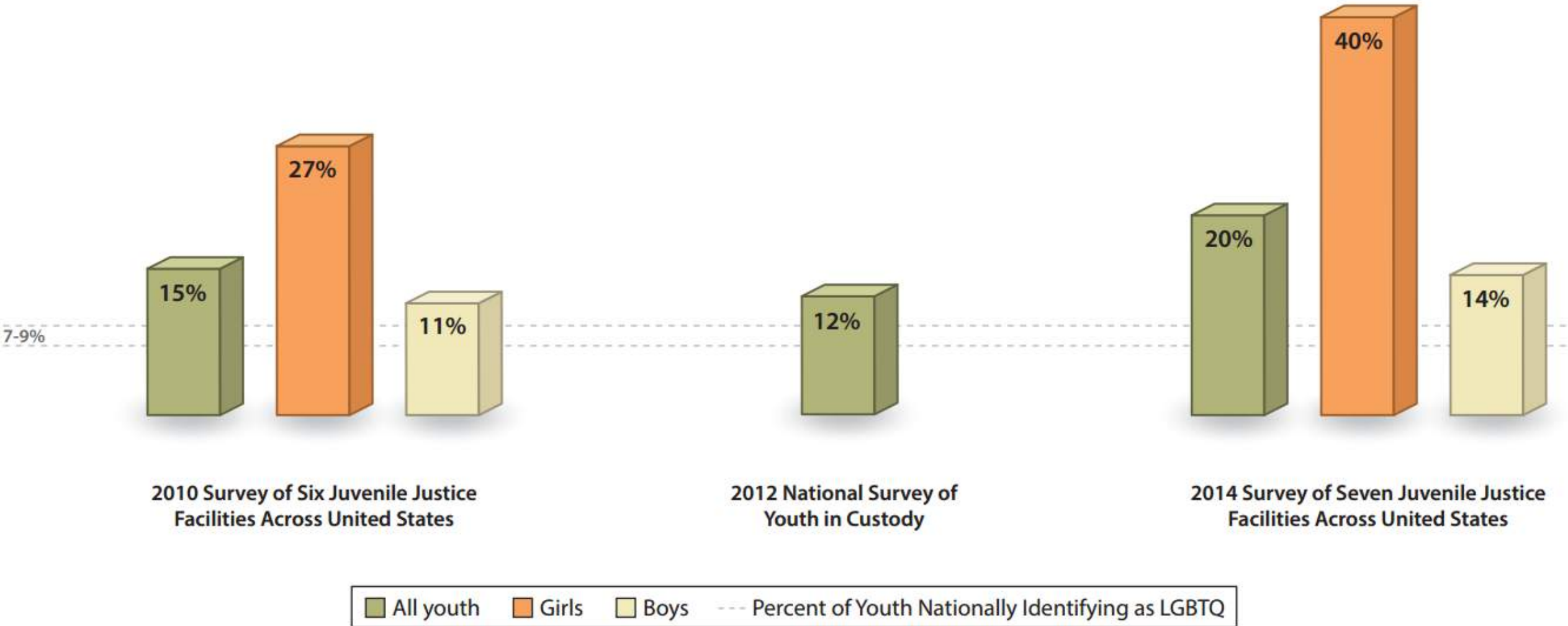
Partners

www.lgbtmap.org/criminal-justice

Unjust: How the Broken Criminal Justice System Fails LGBT People



IN THE CRIMINAL JUSTICE SYSTEM



Why are LGBTQ youth overrepresented in the system?



DISCRIMINATION & STIGMA

LGBT people are pushed into the system by:

- Family Rejection and Negative Child Welfare System Experiences
- Unsafe Schools and School-to-Prison Pipeline
- Employment, Housing, and Healthcare Discrimination
- Homelessness
- Unemployment and Poverty
- Inability to Update ID Documents
- Lack of Social Services

ENTERING
THE SYSTEM



DISCRIMINATORY ENFORCEMENT OF LAWS

LGBT people disproportionately impacted by:

- HIV Criminalization Laws
- Laws Criminalizing Consensual Sex
- Drug Laws



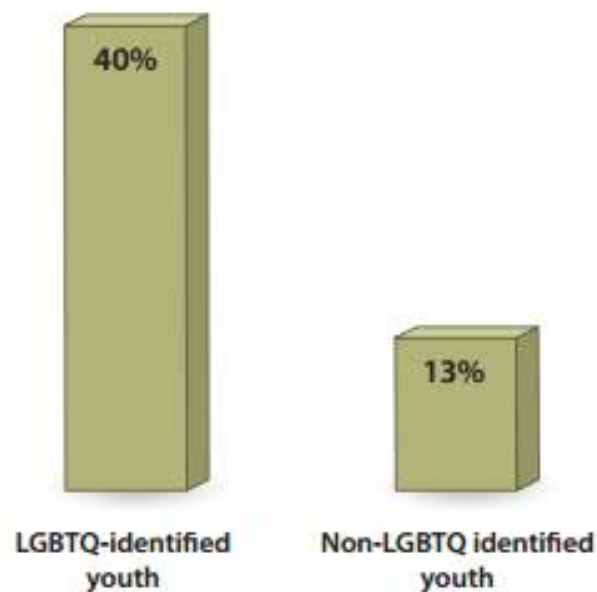
HARMFUL POLICING STRATEGIES & TACTICS

LGBT people experience negative policing strategies, including:

- Quality-of-Life and Zero-Tolerance Policing
- Policing of Gender Norms
- Aggressive Enforcement of Anti-Prostitution Statutes
- Stop-and-Frisk
- Discrimination and Violence When Seeking Assistance
- Abuse and Brutality

Why are LGBTQ youth overrepresented in the system?

LGBTQ Youth Held At Higher Rates
Percent of Youth in California Being Held in Detention for Running Away



Source: Legal Services for Children, National Center for Lesbian Rights, and National Juvenile Defender Center, "The Equity Project," September 2008.

Why are LGBTQ youth overrepresented in the system?

**LGB Youth At Higher Risk For Being
Detained as a Result of Running Away**
Percent of Youth in Juvenile Justice System Reporting
Being Detained for Running Away



Source: Angela Irvine, "LGBT Kids in the Prison Pipeline," The Public Intellectual, May 2, 2011.

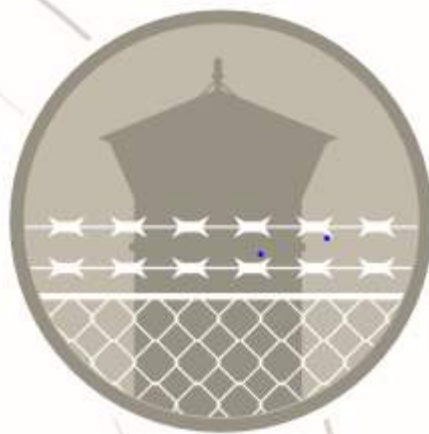


DISCRIMINATION IN LEGAL PROCEEDINGS

LGBT people face:

- Inadequate Access to Counsel
- Discrimination by Judges, Prosecutors, and Court Staff
- Discrimination in Jury Selection and by Juries

IN THE SYSTEM



UNFAIR & INHUMANE TREATMENT IN JAILS, PRISONS, AND DETENTION FACILITIES

LGBT people experience:

- Improper Placement
- Harassment and Sexual Assault by Staff and Inmates
- Inadequate Access to Health Care
- Basic Needs Are Unmet, including Overall Respect, Supportive Services, and Visits by Family
- Incarcerated People Lack Recourse

LGBTQ Youth & Attorney Relationships

Laura Austen





Why skilled juvenile defense attorneys are important

Highly trained and skilled defense counsel is essential to preserve fairness in juvenile court. While the proceedings are rehabilitative in nature, they also include punishment and potential life-long sanctions.

When youth believe they were treated fairly in court, they are more amenable to rehabilitation (see procedural justice).



Why skilled juvenile defense attorneys are important

In order to provide effective representation, an attorney must have a good working relationship with the client.

Trust is essential - you must be available and present.

Be aware of any biases.
Consider attending a training on implicit bias.



Recommendations

1. When you introduce yourself to the child – ask them what name they like to go by.
2. If you have questions during your interview that involve the client's family or boyfriend/girlfriend – be sure to ask the question in a way the child feels it is safe to share information about their sexual orientation or gender identify, or that of their parents/family members.



Recommendations

3. Interview settings are crucial.
4. Consider offering information about resources for LGBT youth in your office – or displaying supportive posters.
5. Know the PREA standards.



Recommendations

6. If a client discusses their sexual orientation or gender identity with you – be sure you are clear on if/when that information may be shared.
7. If that information is relevant to the juvenile court proceedings – consider ways in which you might be able to share that information with the court. (In chambers, ask that only necessary parties are present in the court room, etc.).



Recommendations

8. Be very clear with the child that information about their sexual orientation and gender identity is held in confidence unless/until they give you permission to share the information.
9. Identify resources in your community that clients can access to discuss their feelings and find support.



Recommendations

10. Identify resources for clients who are homeless as a result of their sexual orientation or gender identity.
11. Be aware of issues/offenses that could indicate a child is struggling because of their sexual orientation or gender identity.
12. Be aware of the message you communicate.

Contact Information

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