

# Louisiana LGBT\* Detention Fact Sheet for Juvenile Defenders

## TRAINING

State <sup>1</sup>	Federal <sup>2</sup>
<ul style="list-style-type: none"> <li>All first-year training of direct care staff must include “LGBT competence” training.</li> </ul>	<ul style="list-style-type: none"> <li>PREA requires training on communications with LGBT residents</li> </ul>

### Practice Tips

- ✓ Defenders should be trained in appropriately and competently working with LGBT youth.
- ✓ The Equity Project can provide training to increase awareness and provide staff with the knowledge and tools to meet these training requirements. The National Institute of Corrections and the PREA Resource Center also have additional tools available.<sup>3</sup>

## YOUTH RIGHTS: NONDISCRIMINATION

State <sup>4</sup>	Federal <sup>5</sup>
<ul style="list-style-type: none"> <li>Standards prohibit discrimination based on sexual orientation and gender identity</li> <li>Youth cannot be forced to attend religious services and cannot be disciplined for declining to participate</li> </ul>	<ul style="list-style-type: none"> <li>PREA requires agencies to gather information about gender nonconforming appearance, manner, or identification as LGBT and use that information to determine whether the resident may be vulnerable to sexual abuse while in confinement</li> </ul>

### Practice Tips

- ✓ If you believe your client is facing harassment, abuse, or disproportionate treatment due to their sexual orientation or gender identity, you may want to consider filing a complaint, but only do so with explicit permission from your client. The defender should also document that permission and educate themselves on the parameters of filing such a complaint.
- ✓ PREA Standards do not discuss how agencies should gather information on sexual orientation, gender identity, and gender expression (SOGIE). It should be done in a respectful manner. If you believe it is being done in an inappropriate way, consider (with your client’s permission) filing a complaint. The Equity Project can also provide guidance to agencies on collecting this information.
- ✓ Around the country, youth are sometimes forced to participate in religious activities that condemn their sexual orientation or are punished for not participating. Youth who choose not to participate in religious services, whether or not it is because the religious programming condemns their identity, should not be locked alone in their room during the time that others are attending religious services or punished in any way. If this is occurring, consider filing a motion or a complaint with your client’s permission.

## STAFFING REQUIREMENTS

State <sup>6</sup>	Federal <sup>7</sup>
<ul style="list-style-type: none"> <li>Staff of one gender should supervise only same gender youth during searches, showers, or pat downs</li> <li>Standard does not mention transgender youth</li> </ul>	<ul style="list-style-type: none"> <li>Staff cannot search or physically examine transgender youth solely to determine genital status</li> <li>Security staff must receive training on conducting cross-gender pat down searches and searches of transgender and intersex residents in a professional and respectful manner, in the least intrusive manner possible, consistent with security needs.</li> </ul>

### Practice Tips

- ✓ Even detention facilities that have policies that meet best practice for housing transgender or intersex youth may have policies in other areas that do not explicitly mention transgender or intersex youth. Best practice for transgender or intersex youth is to have the youth self-identify at the time of admission which gender staff member they prefer to conduct searches. Ensure that this is happening by talking to your client, asking to see the detention center’s policies, or seeking a court order if necessary.

1. Louisiana Administrative Code Title 67 Part V Subpart 8 Chapter 75 Juvenile Detention Facilities Licensing Standards (hereinafter Louisiana Detention Standards) Section 7511(F)(3)(a)(ii)(d)

2. Prison Rape Elimination Act (PREA) Juvenile Facility Standards, 28 C.F.R. Part 115 at 28 C.F.R.115.331(a)(9)

3. The Equity Project, [www.equityproject.org](http://www.equityproject.org); Implementing the Prison Rape Elimination Act: A Toolkit for Juvenile Facilities, available at <http://nicic.gov/Library/026881>; [www.prearesourcecenter.org](http://www.prearesourcecenter.org)

4. Louisiana Detention Standards Section 7515(A)(2)

5. 28 C.F.R. 115.341(c)(2)

6. Louisiana Detention Standards Section 7511(G)(5)

7. 28 C.F.R. 115.315(e) and (f)

## ADMISSION AND RELEASE: CLASSIFICATION

State <sup>8</sup>	Federal <sup>9</sup>
<ul style="list-style-type: none"> <li>Housing or programming decisions for youth who are or are perceived to be LGBT on the basis of their actual or perceived SOGIE must be made on an individual basis in consultation with the youth.</li> <li>The reasons for such decisions must be documented.</li> <li>All decisions must be reviewed by the administrator or his/her designee.</li> </ul>	<ul style="list-style-type: none"> <li>LGBTI youth should not be placed in special housing or other assignments solely based on their identity.</li> <li>LGBTI identification is not an indicator that a youth is likely to be sexually abusive to others.</li> <li>Housing or other assignments for transgender or intersex youth shall be made on a case by case basis.</li> <li>Classification decisions should be reviewed at least 2 times per year.</li> <li>Transgender or intersex youth's perception of their own safety should be given serious weight.</li> </ul>

### Practice Tips

- ✓ Best practice is to house transgender youth according to their gender identity if (1) this is where they prefer to be housed and (2) the youth and staff feel this placement is most appropriate in terms of safety and youth's development.
- ✓ Best practice is that LGBT youth should not be housed in a separate unit from other youth, nor should they be put in isolation for their protection, unless they have specifically requested separation, and even then only for short periods of time. While separated from others youth should receive all appropriate programming and services.
- ✓ Ensure best practices by talking to your client, asking to see the facility's policies, or seeking a court order.

## PHYSICAL ENVIRONMENT: SHOWERS

State <sup>10</sup>	Federal <sup>11</sup>
<ul style="list-style-type: none"> <li>Individual showers shall be provided for all youth, with a ratio of not less than 1 shower per 6 youth in the population.</li> <li>Bathrooms shall be designed so youth can shower and perform bodily functions without staff or other youth viewing them naked.</li> </ul>	<ul style="list-style-type: none"> <li>The facility shall implement policies and procedures that enable residents to shower, perform, bodily functions, and change clothing without nonmedical staff of the opposite gender viewing them except in exigent circumstances or during routine cell checks.</li> <li>Transgender and intersex youth should have the opportunity to shower separately from other youth.</li> </ul>

### Practice Tips

- ✓ Best practice is for all youth to have access to individual showers. Transgender and intersex youth should be given the opportunity to shower at a separate time from other youth if necessary to ensure safety.
- ✓ Ensure best practices by talking to your client, asking to see the facility's policies, or seeking a court order.

## DATA COLLECTION AND REVIEW

State	Federal <sup>12</sup>
None	<ul style="list-style-type: none"> <li>Any sexual abuse incident review must consider whether the incident was motivated by factors including gender identity, and LGBTI identification, status or perceived status</li> <li>PREA requires agencies to gather information about gender non-conforming appearance, manner, or identification as LGBT and use that information to determine whether the resident may be vulnerable to sexual abuse while in confinement</li> </ul>

\*Note: LGBT is an abbreviation used to describe lesbian, gay, bisexual, and transgender persons, or the community as a whole. There are many other variations or extensions of the LGBT abbreviation that include initials to represent terms such as questioning, queer, intersex, allied, two-spirited. Please note that when the Equity Project uses the acronym "LGBT" in its materials, it is intended to emphasize the broad range of sexual orientation and gender identity-based terms and should be read as being inclusive of other related identities, unless expressly stated otherwise. Also note that the federal law cited here, PREA uses LGBTI, standing for Lesbian, Gay, Bisexual, Transgender, and Intersex.<sup>13</sup>

\*\*Note: DCFS (Department of Children and Family Services) is the agency responsible for licensing juvenile detention facilities in Louisiana. If they receive notice that a facility may be in violation of any of the Louisiana Standards they have an obligation to investigate.<sup>14</sup>

\*\*\*Note: PREA (Prison Rape Elimination Act) encompasses all federal confinement facilities, "whether administered by [the] government or by a private organization on behalf of such government," 42 U.S.C. 15609(7). With regard to states, those that do not comply with the standards are subject to a five percent reduction in funds they would otherwise receive for prison purposes from OJJDP (Office of Juvenile Justice and Delinquency Prevention) unless the governor certifies that five percent of such funds will be used to enable compliance in future years.

8. Louisiana Detention Standards *Section 7513 (G)(4)(4)*

9. 28 C.F.R. 115.315, 115.342

10. Louisiana Detention Standards *Section 7519 (E)(1)(8)*

11. 28 C.F.R. 115.315 (d)

12. 28 C.F.R. 115.386 (d)(2)