



## STATE STATUTES

CURRENT THROUGH JANUARY 2023

# Protecting the Rights and Providing Appropriate Services to LGBTQIA2S+ Youth in Out-of-Home Care

To find statute information for a particular State, go to the [State Statutes Search](#).

[Research](#) indicates that youth who identify as LGBTQIA2S+ (lesbian, gay, bisexual, transgender, questioning, intersex, asexual, Two-Spirit, or other gender or sexual identity) have more negative experiences and outcomes when they enter out-of-home care than non-LGBTQIA2S+ youth. [Studies](#) have found that LGBTQIA2S+ youth are more likely to report being maltreated while in foster care, more likely to experience a greater number of placements and time in foster care, and less likely to be placed in family-based settings than non-LGBTQIA2S+ youth.

This publication reviews State laws and policies that are directed toward reducing the negative experiences of LGBTQIA2S+ youth in care, including those that affirm a youth's rights to be safe and free from discrimination, have access to needed care and services, and be placed in nurturing settings with caregivers who have received appropriate training. Child Welfare Information Gateway uses

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the term LGBTQIA2S+ to be as inclusive as possible, but State child welfare laws use an array of acronyms, with LGBTQ being the most common.

## RIGHTS OF LGBTQIA2S+ YOUTH IN FOSTER CARE

In approximately 39 States and the District of Columbia, youth placed in out-of-home care who identify as LGBTQIA2S+ have explicit protections from harassment or discrimination based on sexual orientation or gender identity or expression.<sup>1</sup> In the laws and policies of 26 States<sup>2</sup> and the District of Columbia, these explicit protections, include, but are not limited to, the following:

- Receiving fair treatment, whatever their gender, gender identity, or sexual orientation
- Learning about their sexuality in a safe and supportive environment
- Living in a safe, healthy, and comfortable home where they are treated with respect
- Being free from physical, sexual, emotional, or other abuse; corporal punishment; and exploitation
- Being referred to by their chosen names and gender pronouns

- Maintaining privacy regarding sexual orientation and gender identity and expression, unless the youth permits the information to be disclosed

## SUPPORTS FOR LGBTQIA2S+ YOUTH IN CARE

All youth who have been placed in out-of-home care should feel safe, be respected, and receive medical, vision, dental, and mental health treatment. They must be assisted in obtaining access to education services—at their schools of origin when feasible—and be given opportunities to participate in age-appropriate or developmentally appropriate activities and experiences.

Laws and policies in 22 States<sup>3</sup> and the District of Columbia require that agencies provide youth who identify as LGBTQIA2S+ with services and supports that are affirming of the youth's LGBTQIA2S+ identity and are tailored to meet their specific needs. This may include providing clothing and hygiene products that affirm the youth's identity, including gender identity and expression,<sup>4</sup> and referring to the youth by their chosen name and pronouns.<sup>5</sup> In eight States<sup>6</sup> and the District of Columbia, agencies offer developmentally appropriate case management that is oriented toward understanding and appreciating the youth's

<sup>1</sup> The word "approximately" is used to stress the fact that the States frequently amend their laws. This information is current through January 2023. The States that offer protection against harassment or discrimination for youth who identify as LGBTQIA2S+ include Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>2</sup> Arizona, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, and Washington

<sup>3</sup> California, Colorado, Connecticut, Florida, Illinois, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, and Virginia

<sup>4</sup> In nine States: California, Florida, Maryland, Massachusetts, Nevada, North Carolina, Tennessee, Vermont, and Virginia

<sup>5</sup> In 10 States: California, Colorado, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, Rhode Island, Tennessee, and Virginia

<sup>6</sup> California, Connecticut, Maryland, Massachusetts, New Jersey, New Mexico, North Carolina, and Tennessee

gender experience and facilitating access to gender-affirming medical, mental health, and social services.

For youth who identify as transgender and gender nonconforming, eight States<sup>7</sup> and the District of Columbia ensure these youth have access to medically necessary care, including gender-affirming health and mental health care. In nine States<sup>8</sup> and the District of Columbia, the agency must refer the youth to health-care providers who are knowledgeable about the needs of transgender youth, whenever appropriate. In seven States<sup>9</sup> and the District of Columbia, the agency must ensure youth receive a range of transition-related care and treatment that are deemed medically necessary, including, but not limited to, puberty blockers, gender-affirming medications, and medically appropriate surgeries.

In five States,<sup>10</sup> if a youth who identifies as transgender has been receiving gender-related medical and/or behavioral health care, such as hormone therapy or supportive counseling, prior to their placement in out-of-home care, these medications and therapies must be continued under appropriate medical supervision while the youth is in care.

## Efforts to Change a Youth's Sexual Orientation

The term "sexual orientation change efforts" applies to practices that attempt or purport to change an individual's sexual orientation and/or gender identity, with the goal of the person assuming a gender expression that aligns with stereotypical norms, cisgender identity, and/or straight orientation, identity, and sexual behaviors. This includes efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex. [Research](#) shows efforts to change a youth's sexual orientation and gender identity are harmful and should not be provided.

In State laws and policies, these practices are sometimes referred to as "conversion therapy" or "reparative therapy." In 16 States,<sup>11</sup> child welfare agencies are prohibited from making efforts to change a youth's sexual orientation or gender identity or expression, including making referrals for conversion therapy or reparative treatments or in any way suggesting to the youth that such "therapy" is needed. Eighteen States<sup>12</sup> and the District of Columbia prohibit, through professional and occupational codes, mental health practitioners from engaging in conversion or reparative practices with persons who are younger than age 18.

<sup>7</sup> California, Colorado, Illinois, Maryland, Massachusetts, Minnesota, North Carolina, and Tennessee

<sup>8</sup> Connecticut, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, and Tennessee

<sup>9</sup> California, Connecticut, Maryland, Massachusetts, Minnesota, North Carolina, and Virginia

<sup>10</sup> Colorado, Illinois, North Carolina, Tennessee, and Utah

<sup>11</sup> Colorado, Delaware, Florida, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Rhode Island, Tennessee, Utah, Vermont, and Virginia

<sup>12</sup> California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, Virginia, and Washington

## PLACEMENT CONSIDERATIONS

All children and youth who are placed in out-of-home care have the right to be placed in the most suitable setting according to their individual needs. Laws and policies in 20 States<sup>13</sup> and the District of Columbia require that placement decisions must address the specific needs of youth who identify as LGBTQIA2S+. For example, in seven States,<sup>14</sup> child-placing agencies are required to consider the sexual orientation or gender identity expressed by a child or youth when making a placement, regardless of the gender or sex listed in their case record.

Agency policies in eight States<sup>15</sup> provide specific guidance for when LGBTQIA2S+ youth must be placed in congregate care settings. Congregate care facilities must have the capacity to meet the need for youth who identify as LGBTQIA2S+ to feel safe, secure, and affirmed in their placement, with roommate assignments that consider the sexual orientation or gender identity indicated by the youth. In Colorado, South Carolina, and Tennessee, youth who identify as LGBTQIA2S+ must not be placed in isolation or seclusion as a means of keeping them safe from discrimination, harassment, or abuse.

In nine States,<sup>16</sup> decisions on sleeping arrangements for youth who identify as transgender should be based on the youth's individualized needs and should prioritize the youth's emotional and physical safety

and need for privacy. Policies in seven States<sup>17</sup> allow transgender youth to be assigned individual sleeping quarters, and in seven States,<sup>18</sup> facilities must arrange for the youth to use private bathrooms and showers to allow for safety and privacy.

## CAREGIVER QUALIFICATIONS

Policies in 21 States<sup>19</sup> and the District of Columbia address the needed qualifications for persons who provide out-of-home care for children or youth who identify as LGBTQIA2S+. Caregivers must be able to treat each youth with kindness, consistency, and respect; not discriminate in providing care based on race, sex, gender, sexual identity, or sexual orientation; and provide a gender-affirming home environment. In nine States,<sup>20</sup> placements are not permitted with caregivers who oppose sexual orientations that differ from their own, who are unwilling or unable to support youth whose gender identity or gender expression differs from traditional expectations, or who engage in harassment, bullying, or other nonaffirming behavior.

Fifteen States<sup>21</sup> and the District of Columbia require training on LGBTQIA2S+ issues for foster caregivers and related staff. The training topics often include the following:

- The rights of a child in foster care and the resource family's responsibility to safeguard those rights, including the right to have fair and equal access to all available services, placements, care, treatment, and benefits

<sup>13</sup> Arizona, California, Colorado, Connecticut, Florida, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, and Virginia

<sup>14</sup> California, Colorado, Connecticut, Illinois, Nevada, South Carolina, and Tennessee

<sup>15</sup> Colorado, Connecticut, Illinois, Maryland, Massachusetts, South Carolina, Tennessee, and Utah

<sup>16</sup> Colorado, Connecticut, Illinois, Maryland, Massachusetts, Nevada, South Carolina, Tennessee, and Utah

<sup>17</sup> Colorado, Connecticut, Illinois, Maryland, Massachusetts, Tennessee, and Utah

<sup>18</sup> Illinois, Maryland, Massachusetts, Minnesota, South Carolina, Tennessee, and Utah

<sup>19</sup> Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, Tennessee, Utah, Vermont, and Virginia

<sup>20</sup> Colorado, Illinois, New Mexico, New York, Ohio, Oregon, Rhode Island, Tennessee, and Vermont

<sup>21</sup> California, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, New York, North Carolina, Rhode Island, Tennessee, and Utah

- Cultural competency and sensitivity and related best practices to assist youth identifying as LGBTQIA2S+
- Child and adolescent development, including sexual orientation as well as gender identity and expression
- How to communicate effectively and professionally with youth who identify as LGBTQIA2S+
- Current social science research and common risk factors for LGBTQIA2S+ youth experiencing various negative outcomes
- Information about the coming-out process and its impact on LGBTQIA2S+ youth
- Best practices for supporting LGBTQIA2S+ youth in obtaining shelter, housing, and supportive services
- How to establish and maintain a culture that respects the dignity of every youth
- How to use principles of positive youth development
- Psychosocial stress associated with explicit and implicit homophobia, heterosexism, and transphobia as well as stigma associated with being LGBTQIA2S+
- How to recognize, prevent, and respond to harassment against LGBTQIA2S+ youth

## LANGUAGE AND TERMINOLOGY

States use different acronyms when referring to a person's gender identity or sexual orientation. The most common acronym in use, LGBTQ (lesbian, gay, bisexual, transgender, and

questioning or queer), is used by seven States<sup>22</sup> and the District of Columbia. In other States, there is considerable variation, including the following:

- LGBTQ+ (lesbian, gay, bisexual, transgender, questioning, etc.), used by Nevada, North Carolina, and South Carolina
- LGBTQQIAA (lesbian, gay, bisexual, transgender, questioning, queer, intersex, asexual, and ally), used by Connecticut
- LGBTQI (lesbian, gay, bisexual, transgender, questioning, and intersex), used by Colorado and New Jersey and as an abbreviation for LGBTQQIAA by Connecticut
- LGBTQIA+ (lesbian, gay, bisexual, transgender, questioning, queer, intersex, asexual, etc.), used by Massachusetts
- LGBTQQI (lesbian, gay, bisexual, transgender, queer, questioning and intersex), used by Rhode Island
- LGBTI (lesbian, gay, bisexual, transgender, and intersex), used by Tennessee
- LGBTTTQQIAPP (lesbian, gay, bisexual, transgender, Two-Spirit, queer, questioning, intersex, asexual, pansexual, and polysexual), used by Vermont, which also uses the abbreviated acronyms LGBT, LGBTQ, or LGBTQ+
- LGBTQIA+ (lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual, with "+" representing identities not specifically named in the acronym [e.g., pansexual, gender nonbinary, Two-Spirit]), used in Washington

<sup>22</sup> Illinois, Maryland, Minnesota, Tennessee, Utah, Vermont, and Virginia



Other terms and definitions commonly found in State policies include the following:

- "Lesbian" describes a woman whose emotional, romantic, and sexual attractions are primarily for other women.
- "Gay" refers to a person whose emotional, romantic, and sexual attractions are primarily for individuals of the same gender. This is typically used in reference to men, but women can also expressly identify themselves as gay. In some contexts, it is still used as a general term for gay men and lesbian women.
- "Straight" refers to a person who has continuing enduring, emotional, romantic, and affectionate attraction to persons of the other gender (i.e., not lesbian, gay, or bisexual).
- "Bisexual" refers to a person who is emotionally, romantically, and sexually attracted to their gender and another gender.
- "Transgender" is an umbrella term that can be used to describe people whose gender expression is nonconforming and/or whose gender identity is different from their sex assigned at birth, regardless of whether they have changed their physical or hormonal characteristics.
- "Cisgender" refers to individuals whose gender identity and/or gender expression conforms to the characteristics traditionally associated with their assigned sex at birth (i.e., not transgender).
- "Questioning" refers to an active process in which a person explores their own sexual orientation and/or gender identity and questions the cultural assumptions that they are straight and/or gender conforming.
- "Queer" is historically a derogatory slang term used to identify LGBTQIA2S+ people but is now a term that has been embraced and reclaimed by some in the LGBTQIA2S+ community and academia as a symbol of pride that represents individuals who may fall outside of "norms" for gender and sexuality.
- "Intersex" is a general term used to describe a person born with sex characteristics (including genitals, hormones, and chromosomes) that do not fit typical binary notions of male or female bodies.
- "[Two-Spirit](#)" is a term used by some American Indian/Alaska Native communities to describe a person whose body simultaneously houses a masculine spirit and a feminine spirit. Definitions and interpretations might vary between communities.
- "Asexual" describes someone who does not experience sexual attraction.
- "Pansexual" describes someone who is attracted to people regardless of gender.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

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