

Supporting Procedural Fairness for LGBTQIA2S Persons in Your Courtroom

A guide for Oregon Judges

LESBIAN • GAY • BISEXUAL • TRANSGENDER • QUEER/QUESTIONING • INTERSEX • ASEXUAL • NONBINARY • PANSEXUAL • TWO-SPIRIT

Know and enforce nondiscrimination policies—state civil rights laws; court rules; representation standards; school, placement, and agency policies; and canons of ethics.

Do not make assumptions about a person’s sexual orientation or gender identity based on that person’s appearance or name.

If uncertain about someone’s sexual orientation or gender identity, and knowing is necessary to the court’s ability to conduct court proceedings, **ask respectfully and with consideration for privacy**, if possible.

Use gender-neutral language whenever possible (i.e., use name or role in proceedings rather than a pronoun; ask about partners as opposed to husband/wife or girlfriend/boyfriend).

If the person has indicated a chosen name or gender pronoun different from their legal name, **use the person’s name and pronoun of choice**, and ensure court records include the person’s chosen name as well as the legal name, if requested.

Never discuss a person’s sexual orientation or gender identity **unless doing so is necessary to the court’s adjudication**, and, if so, do so with respect.

If a person is under the authority of the court and asks to dress in a manner different than that typically associated with the person’s assigned sex, **ensure that the person is allowed to dress as requested**.

Avoid defining people by their sexual orientation and gender identity. **A person’s sexual orientation and gender identity are just two of many attributes of their identity.**

Ensure that all court staff and court partners are respectful to all individuals, regardless of sexual orientation and gender identity. **Speak out when you hear anyone make discriminatory or derogatory comments.**

Pansexual: A term used to describe people who are attracted to multiple genders, recognizing that gender is not binary.

Two Spirit: Used in some First Nations communities to refer to a person with a masculine and feminine spirit. Historically, 2-Spirit people were often the visionaries, healers, and the medicine people, respected as fundamental community members.

Cisgender: A person who identifies with the sex or gender they were assigned at birth.

Lesbian: A term that describes a woman who is predominantly attracted to other women.

Gay: A term that describes a man who is predominantly attracted to other men.

Bisexual: A term that describes a person who is attracted to men and women, or more than one gender identity.

Transgender (Trans): A term used to describe people whose gender identity is different from the sex or gender they were assigned at birth.

Queer: A broad term inclusive of people who are not straight and/or cisgender. In the past, this was a derogatory term, however it is now often considered positive and empowering within the community.

Intersex: Describes a condition in which a person is born with a sex that doesn’t fit the typical definitions of female or male due to genetic, hormonal, or anatomical differences.

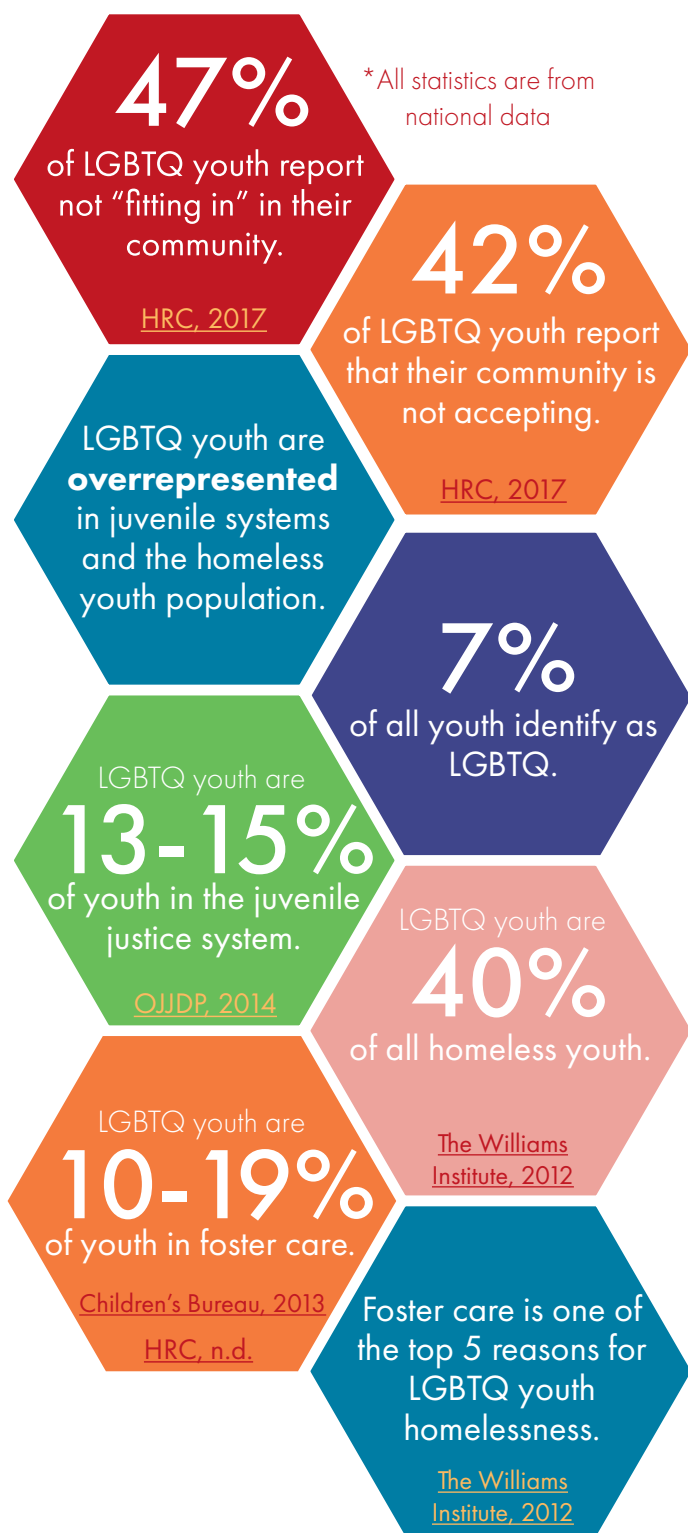
Asexual (Ace): A term describing individuals who do not experience sexual attraction or do not have interest in or desire for sex.

Non-binary: A term used to describe people who identify outside traditional gender categories of man/woman. May identify with neither, both, or a combination of genders.

*Use your role as a leader in the courtroom and the community
to model respectful and fair treatment of LGBTQ people.*

Supporting LGBTQIA2S Youth in Your Courtroom

Everything on the reverse, plus:



Insist the child welfare agency care for the youth in an affirming way. Two of the most important things you can do are:

Ensure that every effort is made to **find LGBTQ youth supportive and affirming placements**, and;

Ensure that transgender youth are able to access medical and mental health services from qualified health care practitioners knowledgeable about their healthcare needs. (Note: OHP covers gender transition-related medical care)

If the agency fails to provide affirming care, **consider making a "no reasonable efforts" finding.**

Require the child welfare agency to find LGBTQ-specific social support opportunities, programs, and services for youth in their care (informal and formal).

Respect a youth's decision to change their legal name and/or gender marker and understand that it may be helpful for the youth to file the necessary paperwork with you, someone with whom they are familiar.

If negative responses to the child's sexual orientation or gender identity led to or were related to placement, **require parents and family members to participate in counseling and parent support groups** to help them accept and support the child and **work toward an emotionally safe reunion.**

Ensure that transgender youth are **placed based on their self-identified gender identity** and not their sex assigned at birth.

Ensure that LGBTQ youth are not required to participate in juvenile sex offender treatment as a punishment merely because of their identities or for being in a same-sex relationship.

Have LGBTQ resources available in your courtroom to share with LGBTQ youth, their families, and lawyers.

Remember that LGBTQ youth in child serving systems often face severe consequences for coming out, and for this reason are constantly negotiating the need to be themselves with their desire to have stability and certainty. **Be sensitive to this delicate balancing act and try to meet the youth where they are in any given interaction.**

To learn more:

ABA Center on Children and the Law, [Opening Doors for LGBTQ Youth in Foster Care: A Guide for Lawyers and Judges](#) (2008).
NCJFCJ, [Access to Justice Irrespective of Sexual Orientation, Gender Identity and Gender Expression](#) (2017).