



Fostering Safety

How the U.S. Government Can Protect LGBT Immigrant Children

By Sharita Gruberg and Hannah Hussey September 30, 2014

The unprecedented number of children running to the U.S.-Mexico border—to flee horrors in their home countries such as widespread rape and gang violence—and being apprehended by the U.S. Border Patrol has increased previous concerns regarding the care they receive in federal custody. Between March 2011 and March 2013, a *Houston Chronicle* investigation found 101 “significant incident reports” of abuse allegations against staff members at facilities contracted by the U.S. Department of Health and Human Services’ Office of Refugee Resettlement, or ORR, the agency in charge of caring for unaccompanied children.¹

While time spent away from parents or guardians leaves all immigrant children vulnerable, unaccompanied lesbian, gay, bisexual, and transgender, or LGBT, immigrant youth are particularly at risk. They already face troubling rates of violence and trauma in their home countries and on their way to the United States. Further abuse or discrimination while held in the custody of the U.S. government is unacceptable from both a legal and an ethical standpoint, and everything must be done to prevent and respond to it.

Fortunately, a road map already exists for protecting unaccompanied LGBT immigrant youth in federal custody. The Prison Rape Elimination Act, or PREA, juvenile standards and individual state nondiscrimination policies provide strong models to prevent and respond to abuse against unaccompanied children. It is now the responsibility of ORR and contracting facilities to immediately implement similar policies. Only then can we ensure that all immigrant youth who arrive in the United States are safely cared for until they can be reunited with their families, regardless of their sexual orientation or gender identity.

Unaccompanied LGBT youth experience overlapping forms of violence

Children who cross the border without a parent or legal guardian are among the most vulnerable to abuse and exploitation, both from adults and from other children. These dangers are not new to them: Many are already fleeing trafficking, violence, and sexual abuse in their home countries.² When the U.S. government assumes the responsibility

of these children, it is acting in the place of their parents.³ This custodial authority confers not only a moral obligation to the U.S. government to ensure the safety and protection of children in its care but also requires it to do so by law.⁴

Types of facilities

Unaccompanied minors who are not from Mexico or Canada are placed in the Office of Refugee Resettlement's custody until they can be released into the care of an appropriate guardian. While ORR locates family members or sponsors for unaccompanied children, it places the children in shelters, foster care, group homes, and staff-secure and secure facilities.⁵ ORR contracts these spaces from private service providers, and more than 80 percent of the Unaccompanied Alien Children program's fiscal year 2014 budget went to housing costs.⁶ Staff-secure facilities are more restrictive than group homes and shelters, while secure facilities are commonly juvenile detention facilities.⁷ The average length of stay in an ORR-contracted facility is 35 days; 85 percent of children are reunited with their families, while the rest remain in ORR's care until their immigration cases are decided.⁸

LGBT youth face higher rates of abuse

While all children need protection from abuse and mistreatment, unaccompanied LGBT children are especially at risk, as they are disproportionately represented in vulnerable youth populations. While 5 percent to 7 percent of the general youth population identifies as LGBT, LGBT youth account for approximately 19 percent of children in foster care and an estimated 12 percent to 15 percent of youth in the juvenile justice system. They also represent a large percentage of the homeless youth population—approximately 40 percent—according to a survey of service providers.⁹ Additionally, LGBT identity is higher among young undocumented immigrants than it is among the general population. A recent survey of DREAMers, or immigrants who came to the United States as children and are under age 30, found that 10 percent identify as lesbian, gay, or bisexual.¹⁰

LGBT youth in group homes and foster care are not only disproportionately represented but also are more vulnerable to abuse. Among LGBT youth in group homes, 70 percent reported violence based on their sexual orientation or gender identity and 100 percent reported verbal harassment. In addition to physical violence, LGBT youth have reported being excluded from programming provided for the children in group homes and receiving hostile comments such as being told “you are going to hell.”¹¹ Similarly, studies on juvenile justice facilities have indicated time and again that LGBT youth in juvenile detention are vulnerable to physical and verbal abuse as well as to sexual violence from both other youth and facility staff. Additionally, LGBT youth in detention are frequently punished for behaviors that their heterosexual counterparts engage in without repercussion, such as hugging, writing letters to, or talking with others of the same gender; are

encouraged to “change” their sexual orientation or gender identity; and are prevented from or disciplined for expressing their gender identity.¹² Transgender youth in particular are often placed in sex-segregated facilities according to their sex assigned at birth rather than their gender identity, and they face challenges in accessing appropriate medical and mental health services.¹³

LGBT immigrant youth are at risk of discrimination and abuse in foster care

Since 2008, the U.S. government has placed more than 3,000 unaccompanied children in the Christian-affiliated His House Children’s Home in Miami Gardens, Florida.¹⁴ One gay foster care alumnus told the *Miami Herald* what happened when he came out at His House at age 16: The director cried and screamed, “How could you do this to me?”¹⁵ Officials at His House expelled the boy from the Christian school, prevented him from attending programs, and subjected him to attempts at conversion. The agency overseeing His House conducted an investigation in response to the story, but it found this treatment did not violate any Florida laws.¹⁶

Experiences such as these paint a grim picture of the risks that immigrant LGBT youth face when placed into group homes or detention facilities. In order to uphold its responsibility to keep youth safe and free from violence, harassment, and discrimination, ORR must ensure that all youth have protections, regardless of their sexual orientation or gender identity.

ORR must immediately implement new standards in all facilities contracted to care for children

The alarming rates of abuse of unaccompanied immigrant youth discovered in the *Houston Chronicle*’s investigation and the known vulnerabilities of LGBT youth in government care are unacceptable and show that existing standards are not effective at preventing or responding to sexual violence and other forms of abuse. Although sexual contact with a child in the Office of Refugee Resettlement’s care is a felony, the *Houston Chronicle* found that not a single shelter worker in the United States has been prosecuted for this. Instead, ORR refers cases to local law enforcement officials, where—as the *Houston Chronicle* found in its investigation—they frequently fall through the cracks.¹⁷ The implementation of standards such as those based on the Prison Rape Elimination Act and of strong non-discrimination policies that address sexual orientation and gender identity are necessary to ensure the safety of all youth in federal custody.

Unaccompanied children are at risk of sexual abuse by other children in facilities

In December 2013, ORR placed an 11-year-old Guatemalan boy and his sister in The Children's Village, a shelter in New York, for several weeks while it processed their mother's fingerprints to confirm her identity.¹⁸ While there, the young boy was sexually assaulted by an older boy at the shelter and was subsequently taken by shelter staff to a hospital. In response to the assault, he was flown to Atlanta the next day to be reunited with his mother. However, she was not given any information about the sexual assault. The boy's mother was told a police report had been filed, but the only paperwork she has seen is a bill from the hospital where her son was taken after the assault. Even her attorney has been unable to get information about the sexual assault from the shelter.

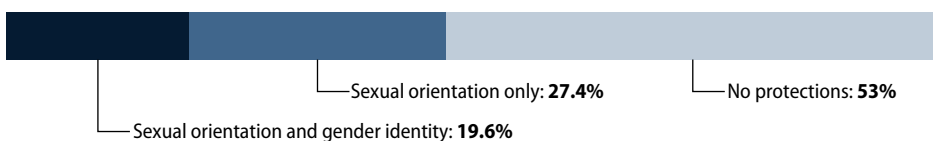
Existing standards are inconsistent and insufficient to address violence and discrimination against LGBT immigrant youth

Standards that are clearly communicated and consistently enforced by ORR are particularly important given the uneven patchwork of federal and state policies that currently govern the facilities in which unaccompanied youth are placed. These policies include individual state child welfare laws; the terms of the *Flores v. Reno* settlement agreement, which dictate the minimum standards of care that must be provided to immigrant children in government custody; and the terms of the contracts between the facilities and ORR.¹⁹

In addition to being targets of sexual violence, LGBT youth in many facilities are vulnerable to other forms of abuse such as harassment and discrimination on the basis of their sexual orientation or gender identity. Because there is no uniform set of rules that governs all of the facilities ORR contracts with, protections vary widely from one facility to another based on individual contracts and state policies. This leaves many youth with inadequate protections and limited recourse.

FIGURE 1
Nondiscrimination protections for LGBT youth

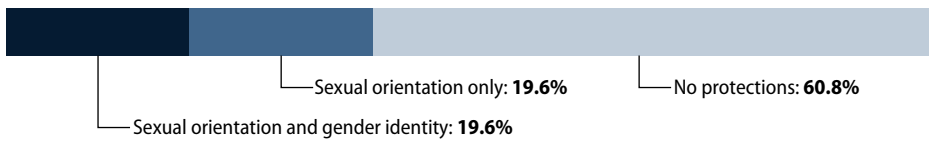
States with protections in the juvenile justice system



Source: Authors' calculations based on Center for the Study of Social Policy, "State Policies Concerning LGBTQ Youth" (2013), available at <http://www.cssp.org/reform/child-welfare/get-real/State-Child-Welfare-Policies-Concerning-LGBTQ-Youth.pdf>.

FIGURE 2
Nondiscrimination protections for LGBT youth

States with protections in the foster care system



Source: Authors' calculations based on Center for the Study of Social Policy, "State Policies Concerning LGBTQ Youth" (2013), available at <http://www.cssp.org/reform/child-welfare/get-real/State-Child-Welfare-Policies-Concerning-LGBTQ-Youth.pdf>.

Figures 1 and 2 show the extent to which protections for LGBT children in group homes, foster care, and juvenile justice facilities differ by state. For instance, only nine states and the District of Columbia have nondiscrimination protections established by state agencies responsible for foster care that are inclusive of both sexual orientation and gender identity; 30 states do not have policies that are inclusive of either.²⁰ Furthermore, more than one-third of the facilities ORR contracts with are religiously affiliated. (see Figure 3)

FIGURE 3
Unaccompanied alien children, or UAC, program providers' religious affiliations

More than one-third of UAC programs are run by religiously affiliated providers



Total UAC providers: 99

Source: Authors' calculations based on Division of Children's Services, "UAC Program Care Provider Locations," (obtained 2014), available upon request. Data reflects religious affiliation posted on the care providers' websites.

While some religious facilities, such as the United Church of Christ-affiliated Bethany Children's Home in Womelsdorf, Pennsylvania, have LGBT-inclusive nondiscrimination policies and services—despite Pennsylvania not requiring these protections—many do not have these safeguards, which are particularly important in instances where specific religious beliefs pose a threat to the well-being of LGBT youth.

An additional major hurdle that attorneys and advocates have found in addressing sexual violence in ORR-contracted shelters is the lack of a consistent process to report abuse and track these reports.²¹ ORR currently requires facilities to have a grievance process in place, but it does not provide guidance for what the process should look like. A 2009 report found a lack of transparency and clarity in the complaint systems in place in facilities, with some simply keeping a complaint box in common areas.²² In the 14 site visits it conducted in

2012, ORR found that documentation of significant incident reports, such as those discovered by the *Houston Chronicle* investigation, needed to be improved.²³

PREA will promote age-appropriate interventions to prevent, detect, and respond to sexual abuse and will bring uniformity to reporting and investigations

PREA was enacted in 2003 to respond to sexual violence in prisons. In 2012, President Barack Obama extended PREA to all federal confinement facilities.²⁴ In March 2013, Congress added another requirement for the nearly 100 facilities contracted by ORR to hold children, giving ORR 180 days to write regulations bringing these facilities into compliance with PREA.²⁵ Since the 180-day deadline passed, 63,000 unaccompanied children have crossed the border.²⁶ In January 2014, ORR submitted an interim rule; however, it has yet to be published and, as of the writing of this issue brief, facilities contracted by ORR to care for unaccompanied children are still not governed by PREA.²⁷

Noting their vulnerability to sexual abuse compared with adults in confinement, the commission charged with recommending standards to implement PREA—the National Prison Rape Elimination Commission, or NPREC—paid special attention to the particular needs of youth and made specific recommendations to address sexual violence in facilities that hold children in its 2009 report.²⁸ These recommendations are particularly important for LGBT youth: In secure facilities governed by PREA, the rate of youth-on-youth sexual abuse in juvenile detention facilities is more than six times higher for LGBT youth than non-LGBT youth, and LGBT youth are approximately twice as likely to report any sexual victimization.²⁹ Importantly, the Juvenile Facility Standards issued by the Department of Justice under PREA provide specific protections for LGBT youth aimed at reducing the disproportionate rates of sexual violence. These standards are a crucial step forward for LGBT youth in detention. However, these protections have not yet been implemented in ORR facilities.

ORR currently has contracts with five juvenile detention facilities. These contracts state that they must comply with the Department of Justice’s National Standards to Prevent, Detect, and Respond to Prison Rape, but not, bafflingly, with the Juvenile Facility Standards enacted specifically to govern juvenile detention facilities. For nonsecure facilities such as shelters, the contracts simply state that they must comply with ORR’s zero-tolerance policy for sexual abuse and sexual harassment of unaccompanied children by staff, contractors, volunteers, or other unaccompanied children.³⁰ However, ORR does not have procedures in place to enforce its zero-tolerance policy for sexual abuse or to ensure secure facilities comply with PREA.

What is needed is what the NPREC referred to as “zero tolerance with teeth.”³¹ Properly implemented PREA guidelines provide the needed teeth to ORR’s existing zero-tolerance policy. Staff members need training on preventing and responding to sexual violence in

facilities that house children in order to understand that keeping children safe from sexual violence is everyone's responsibility. Additionally, hiring a PREA coordinator will better ensure proper implementation and oversight. Protections such as limits on cross-gender viewing and searches—except where necessary for the youth's safety—and LGBT-inclusive placement protocols help ensure that zero-tolerance policies protect all children, including LGBT children, in the care of ORR.³² Additionally, under PREA, ORR would be required to implement procedures for reporting abuse in a manner accessible to children, to track and investigate allegations of abuse, and to clarify procedures for third-party reporting, such as that done through attorneys.³³ In order to prevent sexual violence, procedures must be in place for reporting and responding immediately to incidents.³⁴

The importance of PREA guidelines in responding to sexual abuse

An example of how properly implementing PREA can ensure the appropriate response to sexual abuse can be found at the Union County Juvenile Detention Center in New Jersey. This ORR-contracted juvenile detention facility is governed by the Department of Justice's PREA regulations for juvenile facilities. Between March 2012 and January 2013, an officer at the center engaged in sexual contact with a child in the facility's custody. The child in this case was not an unaccompanied immigrant but rather part of the facility's general population. The officer was arrested and charged with second-degree assault and fourth-degree criminal sexual contact. As a result of the detention center's investigation, the center's superintendent and assistant superintendent both resigned.³⁵

The Department of Justice's PREA standards for juvenile facilities offer a good model for ORR to follow. ORR should move forward with hiring a PREA coordinator and also begin working with contractors to modify existing contracts to include the PREA standards so that implementation can begin as soon as the rule is published. The PREA Resource Center has resources for trainings and resident education to assist with the swift development of these tools for ORR facilities.³⁶ ORR also must create an easy, private, and secure reporting mechanism for children and make that mechanism available for third parties to report abuses as well.

Facilities must be bound by strong nondiscrimination policies

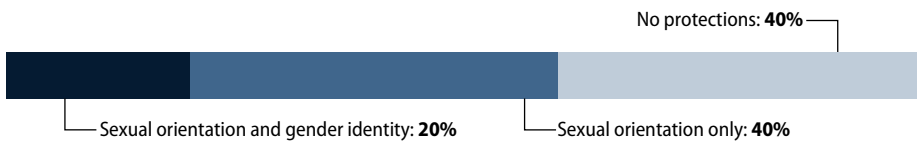
In addition to ensuring the swift implementation of PREA, ORR must ensure broader protections against discrimination for LGBT youth in its contracted facilities. ORR's partnership with Heartland Alliance International's Rainbow Welcome Initiative to

develop training and materials for people who work with unaccompanied LGBT children was an excellent first step, but it is not enough on its own.³⁷ In order to provide adequate services to LGBT youth in their care, facilities need comprehensive nondiscrimination policies that include sexual orientation and gender identity, along with clear mechanisms to promote enforcement and corresponding mandatory professional development for staff on cultural competency when working with LGBT youth. Requiring such policies as part of contracts will help create consistent expectations of affirming care for LGBT youth, especially in those facilities located in states without clear protections. (see Figures 4 and 5)

FIGURE 4

Secure facilities in states with protections in the juvenile justice system

More than half of facilities are located in states lacking comprehensive nondiscrimination protections



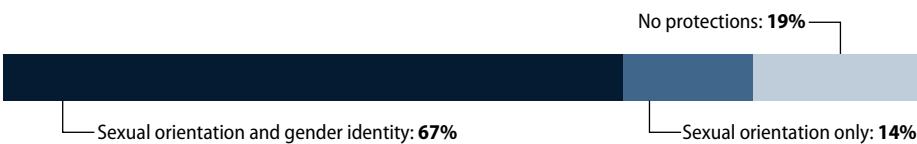
Total secure facilities: 5

Source: Authors' calculations based on Center for the Study of Social Policy, "State Policies Concerning LGBTQ Youth" (2013), available at <http://www.cssp.org/reform/child-welfare/get-real/State-Child-Welfare-Policies-Concerning-LGBTQ-Youth.pdf>; and Division of Children's Services, "UAC Program Care Provider Locations," (obtained 2014), available upon request.

FIGURE 5

Foster and shelter facilities in states with protections in the foster care system

A full one-third of facilities housing children are in states lacking comprehensive nondiscrimination protections



Total foster and shelter facilities: 94

Source: Authors' calculations based on Center for the Study of Social Policy, "State Policies Concerning LGBTQ Youth" (2013), available at <http://www.cssp.org/reform/child-welfare/get-real/State-Child-Welfare-Policies-Concerning-LGBTQ-Youth.pdf>; and Division of Children's Services, "UAC Program Care Provider Locations," (obtained 2014), available upon request.

At a minimum, policies should include a clear statement of nondiscrimination that is inclusive of actual or perceived sexual orientation and gender identity and expression. They should also outline mechanisms for youth or staff to report incidents of harassment or discrimination and the range of appropriate responses, including potential disciplinary

actions for perpetrators. Furthermore, they should contain a plan for disseminating age-appropriate information to youth about their rights and responsibilities in custody regarding discrimination and harassment by other youth and staff, as well as available resources.

In order to be most effective, policies should also set standards or provide guidance to identify specific best practices that facilities must follow to create safe environments for LGBT youth. A handful of states—most notably Massachusetts³⁸ and New York³⁹—have already implemented strong standards for LGBT youth in juvenile detention, either as part of or in addition to the reforms mandated by PREA. These should serve as models for new ORR policies that are responsive to the needs of LGBT youth and are practical to implement and enforce within detention settings; many of these standards also apply to or can be adapted for lower-security facilities. Such standards should address:

- **Intake and release.** Standards should include information on how facility staff can foster the types of safe and supportive environments that youth need in order to feel comfortable disclosing their sexual orientation and gender identity, starting with intake procedures. They should address appropriate reactions to voluntary disclosures of sexual orientation or gender identity by youth, as well as provide guidelines regarding the confidentiality of such information and whether it will be recorded or tracked. Facilities should also be prepared to take a youth's sexual orientation and gender identity into consideration when preparing for release and discharge, including engaging the youth's family. Family engagement, in consultation with the youth, might involve providing information on LGBT-affirming community resources and family services or keeping information about the youth's sexual orientation or gender identity confidential if disclosing it to family members would pose a risk to the youth's safety or well-being.
- **Placement, rooming, and access to facilities.** Nondiscrimination policies should make clear that LGBT youth should not be segregated or isolated on the basis of their sexual orientation or gender identity. Youth placement in sex-segregated facilities or rooms should be made according to the youth's gender identity, as identified by the youth, as should access to bathroom and shower facilities. This policy should be consistently followed except in instances in which the youth expresses a safety concern. Exceptions to this policy or additional accommodations—such as individual bedrooms, room transfers, or opportunities to shower separately—should be offered and permitted upon request of the youth. Staff concerns or exceptions should have a credible rationale that is not based solely on sexual orientation or gender identity.
- **Medical and mental health care.** Policies should ensure that LGBT youth have access to culturally competent and inclusive providers, counseling services, and medical information and that referrals are made to specialists as appropriate. Policies should also include guidelines on access to hormone therapy and other transition-related medical care for youth who have transitioned or would like to transition.

- **Safety and respect.** Guidelines should outline how staff and facility procedures can promote respectful and affirming treatment of LGBT youth throughout all aspects of program operations, including the selection of resources and posters or other visual displays. Staff should make clear that disrespectful, derogatory, or violent comments or behaviors toward a youth based on sexual orientation or gender identity are unacceptable, and attempts by staff to change a youth's sexual orientation or gender identity or expression should be prohibited. Additionally, a youth's preferred name and gender pronouns should be used whenever possible. With regard to dress codes and personal grooming, youth should be provided with gender-appropriate clothing, including undergarments and any other necessary items, and expectations regarding hair and personal grooming should be consistent for all youth regardless of gender identity or expression. In the case of physical examinations or strip searches, transgender and intersex youth should have the opportunity to request a male or female employee to conduct the search, which should not be made for the purpose of determining the youth's genitals.

Finally, facilities should ensure—and contracts should require—that staff and contractors be trained on nondiscrimination policies and provided cultural competency resources on working with LGBT youth. Even when well intentioned, staff may lack skills for serving this vulnerable population. For instance, a survey of juvenile justice professionals found that while 80 percent of respondents indicated that they would like to receive training on working with LGBT youth, only 23 percent had received any such training in the previous two years.⁴⁰ Training and supportive resources are vital to preparing facilities to address the specific needs of LGBT youth in their care. The Rainbow Welcome Initiative's staff-training module, as well as staff-training processes in Massachusetts, can serve as examples of promoting safe and supportive environments for LGBT youth by first responding to the concerns or misconceptions of the staff members who work with them.⁴¹

The time for action is now

Advocates and professionals from the juvenile justice and child welfare fields have created strong momentum to reduce violence and discrimination against young people in state custody. Unfortunately, too many immigrant youth are denied basic protections at the federal level. As additional young people arrive in the United States in search of safety, the Office of Refugee Resettlement must act immediately to implement existing models and to ensure that LGBT immigrant youth are not further traumatized while in the care of the federal government.

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Endnotes

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