

**Pride & Pronouns:
Understanding & Addressing Gender Identity in the Courtroom and Beyond**

**Presented by the
National Association of Women Judges
LGBTQ+ Committee**

July 20, 2022

SPEAKER BIOS



Todd Brower is the Judicial Education Director for the Williams Institute on Sexual Orientation Law and Public Policy at UCLA School of Law. He is a professor of Constitutional Law at Western State College of Law in California. He has an LL.M from Yale Law School, a J.D. from Stanford Law School, an A.B. from Princeton University, and was a Fulbright scholar in France. Professor Brower served on the California Judicial Council - Access and Fairness Advisory Committee and is the author of various law review articles, research studies and publications on the treatment of lesbian, gay, bisexual, and transgender persons in the courts of the United Kingdom, California and New Jersey. He has worked with the courts of several nations in Europe, Africa, and North and South America, with many US states and federal agencies on judicial education programs, and with international and national judicial organizations. He is the current President of the National Association of State Judicial Educators, the professional organization for judicial and court employee education personnel.

Todd may be reached at brower@law.ucla.edu.



Jodi Cleesattle (she/her/hers) is a Supervising Deputy Attorney General in the Employment and Administrative Mandate Section of the California Department of Justice in its San Diego office. She oversees a team of litigators and manages her own caseload of employment litigation, workplace and Title IX investigations, and other civil litigation. She previously was a partner with a Washington, D.C.-based national law firm and, prior to her legal career, was a newspaper reporter and magazine editor.

Jodi is active in various bar associations as well as in community service. She currently serves as First Vice President of California Women Lawyers and chairs its Amicus Committee. She is a board member of the San Diego County Bar Association, having also served a previous term, and she is vice president of the Tom Homann LGBTQ+ Law Association, co-chairing both its Amicus Committee and its CLE & Community Service Committee. Jodi is a member of the National Association of Women Judges and serves on its LGBTQ+ Committee and its Judicial Independence Committee.

Jodi is also a past board member of Lawyers Club of San Diego, a bar association dedicated to the advancement of the status of women; a past chair of the California State Bar's Public Law Section; and past co-chair of the Council of State Bar Sections. She volunteers with and serves as president of Juvenile Court Book Club, a nonprofit that provides tutoring and book clubs for teens incarcerated in San Diego County, and she is a longtime volunteer for Rachel's Women's Center, where she cooks meals once a month for the women served by the shelter.

She was named the 2021 Ronald M. George Public Lawyer of the Year by the California Lawyers Association, and she received Lawyers Club's 2014 Community Service Award for her volunteer work.

Jodi received her B.A. in Communications, *cum laude*, from American University in Washington, D.C., and received her J.D., *summa cum laude*, from American University's Washington College of Law.

She has two young adult children, three dogs, and two cats and lives in San Diego.

Jodi may be reached at jodi.cleesattle@doj.ca.gov.



Tristan E.H. Higgins (she/her/hers) is a highly trained and internationally recognized speaker, consultant and coach on diversity, equity, and inclusion. She founded Metaclusive LLC to move corporations and organizations away from a focus on diversity and inclusion to a focus on belonging.

She is a Vice President of the Lawyers Club San Diego, a Board Member of the American Constitution Society, a member of the San Diego County Bar Association Anti-Racism Committee, Chair of the California Lawyers Association Diversity Outreach Committee, the lead for the CLA Judicial Diversity Summit planning team, and a member of both the National Association of Women Judges and the International Association of Women Judges. She is also a member of most of the specialty bar associations in San Diego.

Tristan has a Bachelor of Arts in Theater from the University of California, San Diego and went to California Western School of Law for her Juris Doctor. She began her career as a prosecutor for the San Diego City Attorney and went on to practice entertainment law for the Screen Actors Guild (SAG- AFTRA) in Los Angeles. After advising SAG-AFTRA in video game contract negotiations, she joined Sega of America in San Francisco, where she oversaw Sega's legal needs for North America. She left Sega to join Sony Electronics in San Diego, where she spent a decade establishing the digital cinema business worldwide, and advising the component sales divisions in Silicon Valley, Novi, Tel Aviv, and Tokyo on high tech licensing and sales.

Tristan lives with her wife, two kids, one dog, and three cats in San Diego, California.

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RELEVANT ARTICLES & MATERIALS

MODEL RULES

ABA Model Code of Judicial Conduct

Canon 2

A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule 2.3: Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Rule 2.8: Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

Rule 2.15: Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

Canon 3

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Rule 3.1 – Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.6 – Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

ABA Model Code of Judicial Conduct for State Administrative Law Judges

Canon 2

An administrative law judge shall perform the duties of office impartially, competently, and diligently.

Rule 2.3: Bias, Prejudice, and Harassment

(A) An ALJ shall perform the duties of office, including administrative duties, without bias or prejudice.

(B) An ALJ shall not, in the performance of official duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit support staff, or others subject to the ALJ's direction and control to do so.

(C) An ALJ shall require lawyers in proceedings before the ALJ to refrain from manifesting bias or prejudice, or engaging in harassment, based on attributes or factors enumerated in (B) above, against parties, witnesses, lawyers, or others.

Rule 2.8: Decorum and Demeanor

(A) An ALJ shall require order and decorum in proceedings before the ALJ.

(B) An ALJ shall be patient, dignified, and courteous to litigants, witnesses, lawyers, staff, and others with whom the ALJ deals in an official capacity, and shall require similar conduct of lawyers, staff, officials, and others subject to the ALJ's direction and control.

Rule 2.15: Responding to Judicial and Lawyer Misconduct

(A) An ALJ having knowledge that another ALJ has committed a violation of this Code that raises a substantial question regarding the ALJ's honesty, trustworthiness, or fitness as an ALJ in other respects shall inform the appropriate authority.

(B) An ALJ having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) An ALJ who receives information indicating a substantial likelihood that another ALJ has committed a violation of this Code shall take appropriate action.

(D) An ALJ who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

Canon 3

An administrative law judge shall conduct personal and extrajudicial activities in a manner that will minimize the risk of conflict with the obligations of the ALJ's office.

Rule 3.1 – Extrajudicial Activities in General

An ALJ may engage in extrajudicial activities, except as prohibited by law or this Code; however, when engaging in extrajudicial activities, an ALJ shall not:

- (A) participate in activities that will interfere with the proper performance of the ALJ's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the ALJ;
- (C) participate in activities that would appear to a reasonable person to undermine the ALJ's independence, integrity, or impartiality;
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.6 – Affiliation with Discriminatory Organizations

- (A) An ALJ shall not hold membership in any organization that practices discrimination on the basis of race, sex, gender identity, religion, national origin, ethnicity, or sexual orientation.
- (B) An ALJ shall not use the benefits or facilities of an organization if the ALJ knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). An ALJ's attendance at an event or facility of an organization that the ALJ is not permitted to join is not a violation of this Rule when the ALJ's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

RELEVANT CASE LAW

People v. Gobrick, No. 352180, 2021 WL 6062732 (Mich. Ct. App. Dec. 21, 2021).

In an opinion affirming a defendant's criminal conviction, the court noted in a footnote that it would use "they" pronouns to refer to the defendant. The court explained that, although the parties referred to the defendant as Mr. Gobrick during the trial court proceedings, defendant's appellate brief indicated that defendant identifies as female and prefers the nonbinary pronouns "they" and "them." The court noted that the prosecution used the nonbinary pronouns in its appellate brief. The court stated that it would honor the defendant's request as well, except when referencing parts of the record that used the pronouns "he" and "him." The court noted, "All individuals deserve to be treated fairly, with courtesy and respect, without regard to their race, gender, or any other protected personal characteristic. Our use of nonbinary pronouns respects defendant's request and has no effect on the outcome of the proceedings."

In an opinion concurring with the ruling on the merits, Judge Mark Boonstra wrote separately "only because this Court should not be altering its lexicon whenever an individual prefers to be identified in a manner contrary to what society, throughout all of human history, has understood to be immutable truth."

Judge Boonstra wrote:

While I respect the right of every person to self-identify however he or she may wish, it frankly should not be of interest or concern to the Court unless it somehow impacts the resolution of the case before us. We as a Court should be writing for clarity and focusing on legal issues, not spending our time making our opinions less clear, all so that we may conform to a particular litigant's predilections.

Once we start down the road of accommodating pronoun (or other) preferences in our opinions, the potential absurdities we will face are unbounded. I decline to start down that road, and while respecting the right of dictionary- or style-guide-writers or other judges to disagree, do not believe that we should be spending our time crafting our opinions to conform to the "wokeness" of the day.

I decline to join in the insanity that has apparently now reached the courts.

United States v. Varner, 948 F.3d 250 (5th Cir. 2020).

A federal prison inmate who came out as transgender requested that the district court that sentenced her correct the judgment of confinement to reflect her new name, about six years after she had been sentenced. The district court construed the letter request as a motion to correct the judgment and denied it. The inmate appealed, and the Fifth Circuit held that the district court lacked jurisdiction to consider the request as a motion to amend the judgment

because it did not fall into any of the recognized categories of postconviction motions. In connection with the appeal, the inmate also had filed a motion requesting that the court refer to her by her new name and female pronouns. The Fifth Circuit denied the motion, holding that:

[N]o authority supports the proposition that we may require litigants, judges, court personnel, or anyone else to refer to gender-dysphoric litigants with pronouns matching their subjective gender identity. Federal courts sometimes choose to refer to gender-dysphoric parties by their preferred pronouns. . . . But the courts that have followed this “convention” have done so purely as a courtesy to parties. None has adopted the practice as a matter of binding precedent, and none has purported to obligate litigants or others to follow the practice.

Id. at 254-255 (citations omitted). The court also noted that “if a court were to compel the use of particular pronouns at the invitation of litigants, it could raise delicate questions about judicial impartiality” because courts are asked to decide cases that turn on hotly debated issues of sex and gender identity:

In cases like these, a court may have the most benign motives in honoring a party’s request to be addressed with pronouns matching his “deeply felt, inherent sense of [his] gender.” Yet in doing so, the court may unintentionally convey its tacit approval of the litigant’s underlying legal position.

Id. at 256 (citations omitted). The court also found that “ordering use of a litigant’s preferred pronouns may well turn out to be more complex than at first it might appear” because of the variety of pronouns available beyond he/him, she/her, and they/them. *Id.* at 256-257.

Circuit Judge James L. Dennis dissented, finding that the majority erred in deciding that the district court lacked jurisdiction to entertain the inmate’s motion to correct the judgment under Federal Rule of Criminal Procedure 36, and noting that he would affirm the district court’s denial of the motion. *Id.* at 258-259. Judge Dennis also found that the majority overbroadly construed the inmate’s motion seeking the use of feminine pronouns and erred in denying the inmate’s request to refer to her using female pronouns:

In my view, Varner is simply requesting that this court, in this proceeding, refer to Varner using her preferred gender pronouns. Not only is this the most faithful interpretation of her motion given the language she uses, it is also the narrowest. Because I would affirm the district court for the reasons it assigns without writing further, I think it is not necessary to use any pronoun in properly disposing of this appeal.

If it were necessary to write more and use pronouns to refer to Varner, I would grant Varner the relief she seeks. As the majority notes, though no law compels granting or denying such a request, many courts and judges adhere to such requests out of respect for the litigant’s dignity.

Ultimately, the majority creates a controversy where there is none by misinterpreting Varner's motion as requesting "at a minimum, to require the district court and the government to refer to Varner with female instead of male pronouns," when she in fact simply requests that this court address her using female pronouns while deciding her appeal.

Id. at 260.

Kosilek v. Spencer, 740 F.3d 733, 737 n.3 (1st Cir. 2014) ("We will refer to Kosilek as her preferred gender of female, using feminine pronouns.")

Cuoco v. Moritsugu, 222 F.3d 99, 103, 103 n.1 (2d Cir. 2000) ("We ... refer to the plaintiff using female pronouns" because "[s]he [is] a preoperative male to female transsexual.")

Pinson v. Warden Allenwood USP, 711 F. App'x 79, 80 n.1 (3d Cir. 2018) ("Because Pinson has referred to herself using feminine pronouns throughout this litigation, we will follow her example.")

Farmer v. Circuit Court of Md. for Baltimore Cty., 31 F.3d 219, 220 n.1 (4th Cir. 1994) ("This opinion, in accord with Farmer's preference, will use feminine pronouns.")

Murray v. U.S. Bureau of Prisons, 106 F.3d 401, 1997 WL 34677, at *1 n.1 (6th Cir. 1997) ("Murray uses the feminine pronoun to refer to herself. Although the government in its brief used the masculine pronoun, for purposes of this opinion we will follow Murray's usage.")

Farmer v. Haas, 990 F.2d 319, 320 (7th Cir. 1993) ("[T]he defendants say 'he,' but Farmer prefers the female pronoun and we shall respect her preference.")

Smith v. Rasmussen, 249 F.3d 755, 756 n.2 (8th Cir. 2001) ("As did the parties during the proceedings in the district court, we will refer to Smith, in accordance with his preference, by using masculine pronouns.")

Schwenk v. Hartford, 204 F.3d 1187, 1192 n.1 (9th Cir. 2000) ("In using the feminine rather than the masculine designation when referring to Schwenk, we follow the convention of other judicial decisions involving male-to-female transsexuals which refer to the transsexual individual by the female pronoun.")

Qz'etax v. Ortiz, 170 F. App'x 551, 553 (10th Cir. 2006) ("[W]e have no objection to Appellant's motion for the continued usage of proper female pronouns and will continue to use them when referring to her.")

ETHICS AND ADVISORY OPINIONS

New York Advisory Committee on Judicial Ethics, Op. 21-09 (Jan. 28, 2021). Available online at: <https://nycourts.gov/legacyhtm/ip/judicialethics/opinions/21-09.htm>

- Summary: Where a party or attorney has advised the court that their preferred gender pronoun is “they,” a judge may not require them to instead use “he” or “she.”

New York Advisory Committee on Judicial Ethics, Op. 21-114(A) (Sept. 9, 2021). Available online at: [https://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/21-114\(A\).htm](https://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/21-114(A).htm)

- Summary: A judge may disclose the judge’s own preferred gender pronouns in the judge’s email signature block and during a virtual proceeding in which the judge presides.

California Judges Association Judicial Ethics Committee, Formal Ethics Opinion No. 79 (June 2022). Available online at: <https://caljudges.org/docs/Ethics%20Opinions/Opinion%2079.pdf>

- Summary: (1) It is ethically permissible for California judicial officers to be members of judicial organizations that resolve to prohibit conferences and other activities in states that discriminate against members of the LGBTQ+ community. (2) It is ethically permissible for California judicial officers to remain members of national organizations that do not discriminate against members of the LGBTQ+ community but that conduct conferences in states that have enacted laws that do so discriminate.

Florida Supreme Court Judicial Ethics Advisory Committee, Op. 2021-11 (Aug. 5, 2021). Available online at: <https://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2021/2021-11.html>

- Summary: (1) A judge who is a member of the National Association of Women Judges may express an opinion among the association’s membership as the association deliberates a proposed resolution calling for what appears to be a boycott against states whose laws, according to the resolution, have “voided or repealed protections against discrimination on the basis of sexual orientation, gender identity or gender expression, or have enacted laws that authorize or mandate [such] discrimination.” (2) A judge’s continued membership in an organization that issues a resolution calling for a boycott based upon state legislation may pose ethical problems under the Florida Judicial Canons.

LEGAL ARTICLES/PAPERS

Fifth Circuit Holds that Courts Cannot Compel Use of Preferred Pronouns – United States v. Varner, 948 F.3d 250 (5th Circ. 2020), 134 Harv. L. Rev. 2275 (Apr. 12, 2021). Available online at: <https://harvardlawreview.org/2021/04/united-states-v-varner/>

James L. Hyer, Sherry Levin Wallach and Kristen Prata Browde. *Examining Judicial Civility in New York Courts for Transgender Persons in the Wake of United States v. Varner*. New York State Bar Association. (Aug. 18, 2020). Available online at: <https://nysba.org/examining-judicial-civility-in-new-york-courts-for-transgender-persons-in-the-wake-of-united-states-v-varner-2/>

Judges' Bench Guide on the LGBTQ Community and the Law, prepared by QLaw Foundation of Washington & QLaw Association: The LGBT Bar Association of Washington, for the Washington State Supreme Court's Gender & Justice Commission (2017). Available online at: <https://www.courts.wa.gov/committee/pdf/LGBTQ%20Bench%20Guide.pdf>

Chan Tov McNamarah, *Some Notes on Courts and Courtesy*. 107 Va. L. Rev. Online 317 (Dec. 31, 2021). Available online at: <https://www.virginialawreview.org/articles/some-notes-on-courts-and-courtesy/>

Protected and Served? Lambda Legal (2012). Available online at: <https://www.lambdalegal.org/protected-and-served>; section on Courts available at: <https://www.lambdalegal.org/node/30526>

- This is a national survey exploring discrimination by police, courts, prisons and school security against lesbian, gay, bisexual, transgender (LGBT) people and people living with HIV in the United States, conducted by Lambda Legal.

Francesco G. Salpietro, *R-E-S-P-E-C-T: Transgender Pronoun Preference and the Application of the Model Code of Judicial Conduct*. (2017). Court Review: The Journal of the American Judges Association 590. Available online at: <https://digitalcommons.unl.edu/ajacourtreview/590>

Transgender Litigants in the Court System: Providing Equal Access and Impartial Justice. New York State Judicial Institute (October 2013). Available online at: <https://nycourts.gov/ip/judicialinstitute/transgender/220A.pdf>

NEWS & OPINION ARTICLES

Devin-Norelle, *Gender-Neutral Pronouns 101: Everything You've Always Wanted to Know* (May 22, 2020) Them. Available online at: <https://www.them.us/story/gender-neutral-pronouns-101-they-them-xe-xem>

LGBTQ+ Organizations Respond to Judge Boonstra in "People vs. Gobrck" (Jan. 30, 2022) Outfront Kalamazoo. Available online at: <https://www.outfrontkzoo.org/news/judgeboonstra>

Merriam-Webster.com, *'They' Is Merriam-Webster's Word of the Year 2019* (2019). Available online at: <https://www.merriam-webster.com/words-at-play/woty2019-top-looked-up-words-they>

Wamsley, Laura, *A Guide to Gender Identity Terms* (June 2, 2021) NPR. Available online at: <https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq>

RESOURCES

Sample Courtroom Sign-In Sheet (attached)

Sample Bench Card: Pronouns and the Courts, prepared by U.S. Magistrate Judge Mustafa T. Kasubhai (D. Ore.) (attached)

Sample Bench Card: Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE), prepared by the National Council of Juvenile and Family Court Judges, State Justice Institute, Resource Center Partnership, and National Juvenile Defender Center (attached)

Sample Bench Card: What Do I Need to Know About Lesbian, Gay, Bisexual, Transgender, Questioning (LGBTQ) Youth in Juvenile Court, prepared by the Judicial Council of California (attached)

Transgender and Gender Nonbinary People in the US – By the Numbers, prepared by Todd Brower, Judicial Education Director, Williams Institute, UCLA School of Law (attached)

SAMPLE COURTROOM SIGN-IN SHEET

Docket No. _____ Case No. _____ Case Name: _____

Your name: _____
 Plaintiff Defendant Attorney Other

Preferred name: _____

Pronouns: He/Him She/Her They/Them Other _____

Preferred Prefix/Title: Mr. Ms. Mrs. Miss Mx. Other _____



PRONOUNS AND THE COURTS

Prepared by U.S. Magistrate Judge Mustafa T. Kasubhai: Mustafa_Kasubhai@ord.uscourts.gov

Why do this?

- Respectfully acknowledging an attorney's, litigant's, witness's, or juror's gender identity with the appropriate pronoun and honorific in court affirms everyone's dignity, cultivates fairness and equal treatment, promotes the appearance of the same, and earns the public's trust and confidence. While Court decorum is necessarily formal, it need not exclude people from being seen and heard.
- Yes, it can be hard to find the language, but it gets easier and more natural with practice. Modify these suggestions to make them your own and commit to using these practices consistently.

What to say in Person

1. **Introducing yourself in a meeting:** My name is Judge _____ and my pronouns are _____.

2. **Rule 16 Conferences and Oral Argument:**

“Thank you for being available to discuss [subject matter] today. I'd like counsel to please introduce yourselves including giving me your full name and your honorific, such as Ms., Mx., or Mr., so I can address you respectfully throughout our meeting today.”

3. **Criminal Docket:**

Before calling the first case, give the general instruction: “I'd like counsel to introduce themselves giving me your full name and your honorific, such as Ms., Mx., or Mr., and if your client will be making an appearance, I ask you to please introduce them to the court by giving me their full name and their honorific, such as Ms., Mx., or Mr.”

4. **Trial:**

When walking attorneys through trial protocols, advise attorneys to “please be sure to introduce clients and witnesses with their honorifics so that I can be sure to address them respectfully throughout the trial.”

5. **Jury Selection:**

“Good morning members of the public. My name is Judge _____. I'd like each of you to introduce yourselves by giving me your full name. Please be sure to give me your honorific, such as Ms., Mx., or Mr., so that I can respectfully address you throughout our time together.”

What to say when you err, and realize it in the moment. Avoid dwelling on the error. Apologize and return to the topic.

“I have erred and I am sorry for doing so. Can you tell me how I can respectfully address you today when I use your last name?”

When someone does not give an honorific or pronoun after you have asked, then assume the pronoun or honorific.

Compelling anyone to identify their pronouns at a time when they do not feel safe or comfortable for any reason undermines the inclusive purpose of this practice.

Language in Orders and Other Documents

1. Case Management, Trial Management, Mediation, and other Scheduling Orders:

“Pronoun Usage. The parties and counsel are encouraged to advise the Court of their pronouns and honorifics (such as Mx., Ms., or Mr.). People appearing before this Court may provide their pronouns and honorifics in writing or orally when appearing for conferences, hearings, or trials. Attorneys are encouraged to identify their pronouns and honorifics in their signature lines when submitting documents for filing. Parties and counsel are instructed to address each other in all written documents and court proceedings by those previously identified pronouns and honorifics.”

2. Website: include your pronouns next to your name. For example, see

<https://ord.uscourts.gov/index.php/court-info/our-judges/judge-kasubhai>



United States Magistrate Judge Mustafa T. Kasubhai (He/Him) ←

3. Email Signature: 1. **Look for** pronouns and honorifics in email signature lines **and use** those pronouns and honorifics. 2. **Include** your pronouns and honorific. For example,



4. Signature byline in all published and unpublished opinions:

Mustafa T. Kasubhai (he/him)
United States Magistrate Judge



Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE)

Supporting Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Gender Non-Conforming (LGBTQ-GNC) Youth

A judge, and all those subject to the judge's direction and control, shall perform their duties of office, both judicial and administrative, free from personal and extracurricular biases. Judges, members of their staff, and lawyers in proceedings before the court are ethically obligated to promote access to justice for all impartially, competently, and diligently regardless of race, ethnicity, religion, sexual orientation, gender identity, and gender expression.¹ Judges shall not "by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so."²

LGBTQ-GNC Youth are Disproportionately Represented in the Juvenile Justice System

- LGBTQ-GNC youth represent 5-7% of the nation's youth population³ but 20% of those in juvenile detention facilities.⁴ Eighty-five percent of these youth are youth of color.⁵ Forty percent of girls in detention facilities identify as LGB-GNC.⁶
- From the time of an LGBTQ-GNC youth's first contact with the system, the youth may be marginalized based on conscious or unconscious perceptions and biases made about their sexual orientation, gender identity, and gender expression. This is compounded for LGBTQ-GNC youth of color who may experience discrimination at the intersection of these aspects of their identity. LGBTQ-GNC youth of color often face discrimination by judges and other justice system actors at all stages of their case.⁷
- LGBTQ-GNC youth are more frequently detained for status offenses, such as running away and truancy, for charges of prostitution, and for probation violations.⁸ State statutes and professional standards provide that pretrial detention should be imposed only when a child poses a risk of flight or is a palpable threat to public safety.⁹ LGBTQ-GNC youth, however, are often detained in situations in which these legal standards are not met.
- At disposition, LGBTQ-GNC youth are confined for nonviolent offenses at twice the rate of their gender-conforming peers.¹⁰ LGBTQ-GNC youth who crossover from the child welfare to the juvenile justice system or are dually involved in both systems, also face increased confinement.¹¹ In facilities, these youth are at greater risk of abuse, injury, and suicide.¹² Additionally, incarcerated youth are much more likely than incarcerated adults to be sexually abused.¹³ For LGBTQ-GNC youth, this is even more prevalent.

Unique Considerations at Every Stage of the Case

- Do not make assumptions regarding sexual orientation or gender identity.
- Examine any attitudes, beliefs, or biases that you may consciously or unconsciously hold.¹⁴
- Use developmentally appropriate language and ensure knowledge and use of current and appropriate terminology relevant to working with LGBTQ-GNC individuals.¹⁵
- Support an individual's expression of gender identity by using their preferred name and pronouns of choice.¹⁶
- Keep gender expression and identity confidential when it is not relevant to the court proceeding.
- Be mindful of the unintended consequences of "outing" a child.¹⁷
- Respect the privacy rights of all LGBTQ-GNC youth and never disclose a youth's sexual orientation or gender identity unless the youth has given you permission to do so, either through counsel or through direct communication.
- Allow transgender and gender non-conforming people to wear clothing that matches their gender identity or expression.
- Demand professionalism and prohibit use of derogatory pronouns, including "he-she" and "it" in reference to LGBTQ-GNC individuals. Instead, ensure that everyone in court uses an individual's chosen pronouns, such as he, she, they, or ze.
- Proactively address any homophobic or transphobic comments or actions made by anyone in the courtroom.
- Ensure that all juvenile justice professionals treat LGBTQ-GNC individuals with fairness, dignity, and respect, including prohibiting any attempts to ridicule or change a youth's sexual orientation or gender identity.
- When an LGBTQ-GNC youth is involved in both the juvenile justice and child welfare systems, determine whether the services identified for the youth are appropriate for the identified needs.¹⁸
- When the source of a delinquency charge against an LGBTQ-GNC youth originates from an existing child welfare placement, or where safety issues exist in the current child welfare placement, require alternative placements be evaluated and presented to the court.
- Become familiar with laws and policies that protect SOGIE and have resources available in the courtroom to share with LGBTQ-GNC youth and their families, as well as juvenile court actors and treatment providers.

Unique Considerations at Specific Stages of the Case

DETENTION AND PROBABLE CAUSE HEARINGS

- In making a probable cause determination, ensure bias related to the youth's sexual orientation, gender identity, or gender expression was not the underlying or direct basis for arrest and court referral.
- Pretrial detention should only be employed if it is the least restrictive option to ensure court appearance or if it is necessary to address substantial public safety concerns. These considerations are particularly important for LGBTQ-GNC youth due to increased and well-documented risk of harm to this population of youth in placement facilities.¹⁹
- If detention must be utilized, ensure that at a minimum the placement facility complies with PREA,²⁰ and other best practices related to housing of LGBTQ-GNC youth.

PRETRIAL MOTIONS

- Where issues relating to the youth's SOGIE are raised in pretrial motions, carefully consider any existing law, research, best practices, and standards of care before issuing a decision. Request information to supplement the motion if necessary.

DISPOSITION

- Where probation or the prosecution recommends services as part of the disposition, be cognizant of ordering services that are harmful or inappropriate for LGBTQ-GNC youth. Examples of harmful services include, but are not limited to, reparative therapy, unnecessary sex offender assessment or treatment, and requirements to conform with the sex the child was assigned at birth.
- When out-of-home placement is recommended, ensure it is competent to serve LGBTQ-GNC youth; review any available information and data about the placement to determine if appropriate services are available for LGBTQ-GNC youth; ensure youth will have access to the same programs as their straight and cisgender peers; make sure that LGBTQ-GNC youth are not placed into more restrictive placements than are necessary merely because other placements will not accept them on the basis of their SOGIE.
- Consider alternate LGBTQ-GNC friendly/appropriate resources or plans identified by the youth's defender when they are different than what probation or the prosecution is requesting.
- Be familiar with resources in the community that provide better and more competent alternative placements than a commitment facility.
- Given the high rates of family rejection that LGBTQ-GNC youth experience, support the youth's family of choice when out-of-home placement is unnecessary but the youth's family will not allow the child to return home.
- Where the youth's SOGIE is a barrier to family reunification, when possible order parents and family members to participate in counseling and parent support groups to assist in helping them become more accepting and supportive of their LGBTQ-GNC child.

Unique Considerations at Specific Stages of the Case (cont.)

POST-DISPOSITION REVIEW HEARINGS/PROBATION REVOCATION

- When a post-disposition review hearing is scheduled or requested, or when a motion for modification of disposition is filed, inquire as to conditions of confinement and address any concerns if there is possible discrimination based on SOGIE. Make specific inquiry about any reported instances of isolation, administrative segregation, disparate application of sanctions, allegations of abuse, prohibition or punishment of gender expression, health and safety issues, and fair and respectful treatment.
- Where necessary, issue orders to prevent institutions from treating LGBTQ-GNC youth differently than their straight and cisgender peers; require the use of qualified mental health practitioners who are knowledgeable about LGBTQ-GNC youth for court-ordered evaluations and treatments; ensure that transgender youth receive necessary medical services from qualified healthcare practitioners knowledgeable about Gender Dysphoria and medical care for transgender youth.
- Recognizing that isolation of LGBTQ-GNC youth is often a contributing factor to acting out in placements, make inquiry into available opportunities for LGBTQ-GNC youth to read appropriate magazines, books, and watch movies with LGBTQ-GNC themes, to socialize with other LGBTQ-GNC youth, and to engage in recreational activities together.

VIOLATIONS OF PROBATION/PROBATION REVOCATION

- Inquire whether the probation officer has instituted appropriate services and opportunities for support for the LGBTQ-GNC youth on probation.
- Determine whether the reason for revocation is related to bias or other factors specific to the youth's SOGIE.

Understanding LGBTQ-GNC Terminology

LGBTQ-GNC is an acronym that stands for Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Gender Non-Conforming. This bench card uses the acronym "LGBTQ-GNC" in the broadest sense possible. While there are many other acronyms that may reflect a more nuanced understanding of the breadth of identities that exist within the SOGIE (Sexual Orientation, Gender Identity, and Gender Expression) spectrum (e.g. LGBTQQIAA2-S: Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, Asexual, Ally, and Two-Spirit), the judges involved in drafting this bench card chose LGBTQ-GNC for the sake of brevity and uniformity. Terminology is constantly evolving and because certain groups may gravitate to certain terms and abbreviations over others, it is therefore difficult to come to a commonly agreed upon acronym that reflects all perspectives. This model's use of LGBTQ-GNC is intended to be as inclusive of all identities as possible. For a comprehensive glossary of key LGBTQ-GNC terms, please visit the links provided under Additional Resources.

Training

This bench card provides judges with introductory principles and best practices to ensure that LGBTQ-GNC people in the courtroom are treated with respect by all justice system actors. Comprehensive, supplementary training by professionals with specific competence in SOGIE issues and expertise in the fields of juvenile justice and LGBTQ-GNC rights is strongly recommended in conjunction with use of this card. To be connected with leading experts, please contact The Equity Project by emailing info@equityproject.org.

Additional Resources

The Equity Project: An initiative to ensure that LGBTQ-GNC youth in juvenile delinquency courts are treated with dignity, respect, and fairness.

- See generally: <http://www.equityprojects.org/>
- Short definitions list: <http://www.equityprojects.org/wp-content/uploads/2015/03/ShortDefinitionListHandout.pdf>
- Hidden Injustice: Lesbian, Gay, and Transgender Youth in Juvenile Courts: http://www.equityprojects.org/wp-content/uploads/2014/08/hidden_injustice.pdf (includes a Glossary of Terms on page 145-Appendix A)
- Toward Equity: Understanding Sexual Orientation, Gender Identity, and Gender Expression and Developing Competency to Serve Lesbian, Gay, Bisexual, and Transgender Youth in the Juvenile Justice System <http://www.equityprojects.org/training/toward-equity-full-curriculum-download/>

Lambda Legal: An organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

- See generally: www.lambdalegal.org

National Center for Lesbian Rights – Youth Project: Advancing the rights of LGBT youth through education, public policy, and precedent-setting casework to ensure that all LGBT young people are safe and can live openly with the support they need to reach their full potential.

- See generally: www.nclrights.org

Center for American Progress - Movement Advancement Project: An independent nonpartisan policy institution that is dedicated to improving the lives of LGBT Americans.

- See generally: <https://www.americanprogress.org/issues/lgbt/view/>

GLSEN: An organization dedicated to improving the education system for LGBTQ students.

- See generally: <https://www.glsen.org/>

Family Acceptance Project: An initiative that works to prevent health and mental health risks for lesbian, gay, bisexual and transgender (LGBT) children and youth, including suicide, homelessness and HIV – in the context of their families, cultures and faith communities.

- See generally: <https://familyproject.sfsu.edu/>

Parents, Families & Friends of Lesbians and Gays (PFLAG): Promoting the health and well-being of lesbian, gay, bisexual and transgender persons and their families and friends through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights.

- See generally: www.pflag.org

Improving Courtroom Culture

Encourage justice system actors, such as defense lawyers, court workers, probations staff, service providers, and others advocating for LGBTQ-GNC youth to follow the guidelines outlined in this bench card.

ENDNOTES

1. See generally MODEL CODE OF JUD. CONDUCT r. 2.3 (AM. BAR ASS'N 2007); MODEL RULES OF PROF'L CONDUCT r. 8.4 (AM. BAR ASS'N 2016). See also CONN. PROB. CT. CODE JUD. CONDUCT r. 2.3; ME. CODE JUD. CONDUCT 2.3; MASS JUD. CODE OF CONDUCT r. 2.3(2) (2016); MO CODE OF JUD. CONDUCT r. 2.3 (2013); OR CODE OF JUD. CONDUCT. R. 3.3(B) (2013); 42 P.C.S.A. § 102 (2016).
2. MODEL CODE OF JUDICIAL CONDUCT r. 2.3(B) (AM. BAR ASS'N 2007).
3. Angela Irvine, "We've Had Three of Them": Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, 19 COLUM. J. GENDER & L. 675 (2010); DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, MODEL PROGRAMS GUIDE LITERATURE REVIEW: LGBTQ YOUTHS IN THE JUVENILE JUSTICE SYSTEM (2014), <https://www.ojjdp.gov/mpg/litreviews/LGBTQYouthsInTheJuvenileJusticeSystem.pdf>.
4. Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24 J. GENDER SOC. POL'Y & L. 243, 248 (2016). See also Bianca D. M. Wilson et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, 46 J. YOUTH ADOLESCENCE 1547 (2017) (LGBTQ and particularly LGBTQ youth of color are overrepresented in the juvenile justice system).
5. See Irvine & Canfield, *supra* note 4, at 248. See also CENTER FOR AMERICAN PROGRESS & MOVEMENT ADVANCEMENT PROJECT, *Unjust: How the Broken Criminal Justice System Fails LGBTQ+ People of Color*, 2016 [hereinafter *Unjust*]; Wilson et al., *supra* note 4, at 1.
6. Irvine & Canfield, *supra* note 4, at 257-58; see also Wilson et al., *supra* note 4, at 2.
7. Irvine & Canfield, *supra* note 4, at 248; see *Unjust*, *supra* note 5; Wilson et al., *supra* note 4, at 2.
8. Irvine, *supra* note 3, at 675; Wilson et al., *supra* note 4, at 3.
9. Some state statutes allow for a juvenile to be detained if they are deemed to be a danger to themselves. Prior to the detention of an LGBTQ-GNC youth who is purportedly a danger to themselves, judges should ensure that there is an actual danger, rather than a perceived danger based on the youth's SOGIE. It is often this errant rationale that leads to the unnecessary detention of status offenders, runaways, and LGBTQ-GNC youth. See *Unjust*, *supra* note 5; Wilson et al., *supra* note 4, at 3.
10. FRANCINE H. JACOBS & FRANCINE T. SHERMAN, JUVENILE JUSTICE: ADVANCING RESEARCH, POLICY, AND PRACTICE 164 (2011).
11. REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 6 (Richard J. Bonnie et al., eds. 2013).
12. See Eileen Poe-Yamagata & Michael A. Jones, *Building Blocks for Youth, And Justice for Some: Differential Treatment of Minority Youth in the Justice System* (2000), http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf. See also Wilson et al., *supra* note 4, at 4.
13. U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH (2012), <https://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.
14. Implicit biases are held by all people, even those with commitments to impartiality such as judges. Implicit associations do not necessarily align with consciously held or declared beliefs. See Video: Hidden Injustice: Bias on the Bench (Am. Bar Ass'n), <http://www.americanbar.org/diversity-portal/diversity-inclusion-360-commission/implicit-bias.html> (last visited March 27, 2017). See also EQUITY PROJECT, TOWARD EQUITY: UNDERSTANDING SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION AND DEVELOPING COMPETENCY TO SERVE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN THE JUVENILE JUSTICE SYSTEM, http://www.equityprojects.org/wp-content/uploads/2015/01/Equity_Curriculum_Complete.pdf [Hereinafter *Toward Equity*].
15. For key terms and relevant terminology glossaries, see source cited *supra* Additional Resources.
16. Walter Meyer III et al., *The Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders* 9 (6th ed. 2001), <http://www.cpath.ca/wp-content/uploads/2009/12/WPATHsocv6.pdf>. See also TERESA DECRESCENZO & GERALD P. MALLON, SERVING TRANSGENDER YOUTH: THE ROLE OF THE CHILD WELFARE SYSTEM 19 (Child Welfare League of America 2000).
17. Common feelings associated with coming out include loss of relationships and friendships, rejection, being kicked out of the house, and not having financial support for food, clothing, or school. *Toward Equity*, *supra* note 14, at 16, 22-23.
18. See *Toward Equity*, *supra* note 14; *Unjust*, *supra* note 5.
19. LAMBDA LEGAL, KEEPING LGBTQ YOUTH SAFE IN JUVENILE JUSTICE & DELINQUENCY PLACEMENTS (2012), http://www.lambdalegal.org/sites/default/files/gdtb_2013_10_juvenile_justice.pdf.
20. Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972. See also *Prison Rape Elimination Act*, NATIONAL PREA RESOURCE CENTER, <https://www.prearesourcecenter.org/about/prison-rape-elimination-act-prea> (last visited Mar. 29, 2017).

BENCH REFERENCE GUIDE

What Do I Need to Know About Lesbian, Gay, Bisexual, Transgender, Questioning (LGBTQ) Youth in Juvenile Court?

📖 Learn LGBTQ terminology and become comfortable using it (see reverse).

📖 Know federal and state laws protecting LGBTQ youth (see reverse).

📖 Consider whether a youth in your courtroom is LGBTQ and who else in the youth's life knows of his or her gender identity.

- ▶ LGBTQ youth may not immediately offer this information.
- ▶ Do not make assumptions that a youth is LGBTQ based on how the youth looks or acts. Ask the youth at side bar if he or she is LGBTQ if you think it's relevant.
- ▶ Be careful not to "out" a youth unnecessarily.
- ▶ Do not discuss a youth's sexual orientation or gender identity in open court without his or her permission. Safeguard the youth's privacy and confidentiality.

📖 Use the name and pronoun a transgender youth prefers.

If the youth's attorney does not tell you, ask, or ask at side bar, what name and pronoun the youth would like you to use.

📖 Determine the level of support an LGBTQ youth has from family and other adults.

- ▶ If the youth is experiencing family rejection, what is being done to support the family's acceptance and reconciliation?
- ▶ Encourage the family to participate in counseling and support groups if they need help in supporting their LGBTQ youth.

📖 Determine if an LGBTQ youth is safe and respected in his or her placement.

- ▶ The placement should allow youth to dress in clothing appropriate for his or her gender identity.
- ▶ If a gender-specific placement is recommended, a transgender youth should be placed according to his or her gender identity, rather than birth gender.
- ▶ The placement should explicitly prohibit discrimination and mistreatment of youth on the basis of actual or perceived sexual orientation or gender identity.
- ▶ If necessary, issue orders to prohibit detention facilities and other services from treating LGBTQ youth differently than their heterosexual peers.
- ▶ Ensure that those in less restrictive settings are not refusing to accept an LGBTQ youth because of his or her sexual orientation or gender identity.
- ▶ If an LGBTQ youth has a history of running away or is often truant, explore whether lack of safety or harassment may be contributing to those behaviors.
- ▶ Ensure that the LGBTQ youth is encouraged and permitted to participate in activities consistent with the youth's interests and identified communities. (Welf. & Inst. Code, §§ 362.05, 16001.9.)

📖 Determine if the LGBTQ youth is safe at school and is not facing harassment, violence, or discrimination.

- ▶ Is the youth safe in the school and en route to and from school? If not, what is the school doing to provide or ensure safety? What is the youth's placement doing?
- ▶ Is lack of safety or harassment contributing to the truancy?

📖 Determine whether a transgender youth has medical needs related to the youth's gender transition.

Some transgender youth may be undergoing hormone or other medical treatment. Issue any necessary orders to allow transgender youth to receive medically necessary treatment recommended by qualified health-care practitioners knowledgeable about gender identity disorder and transgender youth. Denial of these services could be physically and emotionally harmful.

📖 Determine whether services proposed in an LGBTQ youth's case plan are appropriate and delivered by staff knowledgeable about LGBTQ issues and supportive of these youth. Services should:

- ▶ Provide training on issues related to sexual orientation and gender identity.
- ▶ Not pressure a youth to change his or her sexual orientation or gender identity.
- ▶ Adopt and enforce nondiscrimination policies.
- ▶ Help LGBTQ youth address family rejection, school harassment, and societal stigma.

📖 Ensure that attorneys, social workers, probation officers, and court personnel are respectful to LGBTQ youth in your courtroom.

- ▶ Ensure that all persons working on an LGBTQ youth's case refrain from engaging in conduct that exhibits bias based on gender or sexual orientation. (Cal. Stds. Jud. Admin. 10.20(a)(2); Cal. Code Jud. Ethics, canon 3B(6).)
- ▶ Immediately respond to any homophobic or inappropriate comments made in your presence.
- ▶ Determine whether an LGBTQ youth's attorney is supportive of the youth's needs.
- ▶ Quality legal representation helps to ensure that youth receive appropriate placements and services. Attorneys should advocate against unnecessary detention and incarceration.
- ▶ Encourage continuing education among courtroom staff and court personnel about LGBTQ youth issues.

The Administrative Office of the Courts (AOC), in consultation with the Judicial Council's Access and Fairness Advisory Committee, developed this guide for judicial officers with juvenile calendars to help them address issues relating to lesbian, gay, bisexual, and transgender youth in the court system.

ADDITIONAL INFORMATION ON STATE LAWS AND LGBTQ YOUTH

California Department of Social Services Ombudsman's Website for LGBTQ Youth

www.fosteryouthhelp.ca.gov/LGBTQ.html

Foster Care Nondiscrimination Act (Assem. Bill 458)

www.nclrights.org/site

- ▶ All foster children and all adults engaged in the provision of care and services to foster children have a right to fair and equal access to all available services, placement, care, treatment, and benefits.¹
- ▶ All foster children and all adults engaged in the provision of care and services to foster children have a right not to be subjected to discrimination or harassment on the basis of actual or perceived sexual orientation or gender identity.²
- ▶ These rights and protections are included in the California Foster Child List of Rights.
- ▶ All group home administrators, foster parents, and department licensing personnel must receive initial and ongoing training on the right of a foster child to have fair and equal access to all available services and to not be subjected to harassment or discrimination based on their actual or perceived sexual orientation or gender identity.³

California Student Safety and Violence Prevention Act (Assem. Bill 537)

AB 537 protects students and school employees against discrimination and harassment based on their actual or perceived sexual orientation or gender identity at all California public schools and any school receiving state funding except religious schools. The protections cover any program or activity in a school, including extracurricular activities and student clubs.⁴

California Juvenile Justice Safety and Protection Act (Sen. Bill 518)

www.nclrights.org/site

- ▶ Senate Bill 518 prohibits harassment and discrimination based on actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, and HIV status in all California Department of Juvenile Justice (DJJ) facilities.⁵
- ▶ DJJ facilities must ensure the safety and dignity of every youth in their care and must provide care, placement, and services to youth without discriminating on these bases.

- ▶ SB 518 establishes a Youth Bill of Rights that explains the many rights that youth confined in DJJ facilities have under state law and the U.S. Constitution. The Youth Bill of Rights lists 17 basic fundamental rights for youth, including the right to live in a safe, healthy, and clean environment that is conducive to treatment and rehabilitation and where they are treated with dignity and respect.⁶

KEY TERMS⁷

BISexual: A person who is emotionally, romantically, and sexually attracted to both males and females.

Gay: A person who is emotionally, romantically, and sexually attracted to persons of the same sex. May be used to refer to gay males only. Preferred over the term "homosexual," which has clinical overtones.

GENDER EXPRESSION: The manner in which a person expresses gender through clothing, appearance, behavior, speech, etc. Gender expression is a separate concept from sexual orientation and gender identity. For example, a man may exhibit an effeminate manner but identify himself as heterosexual and male.

GENDER IDENTITY: A person's internal, deeply felt sense of being male or female.

GENDER IDENTITY DISORDER (GID): A disorder in a person whose gender identity conflicts with the sex assigned to him or her at birth.

LESBIAN: A female who is emotionally, romantically, and sexually attracted to other females. Preferred over the term "homosexual," which has clinical overtones.

LGBTQ: An acronym commonly used to refer to lesbian, gay, bisexual, transgender, and questioning individuals.

QUESTIONING: Refers to a person, often an adolescent, who is exploring issues of his or her sexual orientation or gender identity.

SEXUAL ORIENTATION: A person's emotional, romantic, and sexual attraction to persons of the same or different sex. More appropriate than "sexual preference."

TRANSGENDER: Used as a general term to include all persons whose gender identity or expression do not match traditional expectations of how a person of that sex behaves in relation to his or her gender.

TRANSSEXUAL: A person who seeks to live in a gender opposite of that designated at birth and who usually has or wants medical intervention (through hormones or surgery) to live comfortably in that gender. Many transsexual people refer to themselves as "transgender."

¹Welf. & Inst. Code, § 16001.9(a)(23); Welf. & Inst. Code, § 16013(a).

²*Ibid.*

³Health & Saf. Code, §§ 1522.41(c)(1)(H), 1529.2(b)(3)(F), 1529.2(b)(4)(E), 1563(c)(5).

⁴Educ. Code, §§ 220, 210.7, 212.6, 32228, 51500.

⁵Welf. & Inst. Code, §§ 224.71(i), 224.73.

⁶Welf. & Inst. Code, § 224.71.

⁷Based on information provided by Judicial Education and Training Program, Williams Institute on Sexual Orientation Law and Public Policy, University of California, Los Angeles School of Law.



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Transgender and Gender Nonbinary People in the US – By the Numbers

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Transgender Adults and Youthⁱ

- Over 1.6 million US adults (ages 18+) and youth (ages 13 to 17) identify as transgender (0.6%).
- ~1.3 million adults identify as transgender (0.5%); 300,000 youth (1.4%).
- 38.5% of transgender adults are transgender women, 35.9% are transgender men, and 25.6% reported they are gender nonconforming.
- Transgender individuals are younger on average than the U.S. population. Youth ages 13 to 17 are significantly more likely to identify as transgender (1.4%) than adults ages 65 or older (0.3%).
- The racial/ethnic distribution of youth and adults who identify as transgender is generally similar to the U.S. population. But transgender youth and adults are more likely to report being Latinx and less likely to report being White compared to the U.S. population.
- Williams Institute data from 2016-2017 and 2021 show that the number and percentage of US adults who identify as transgender has remained steady over time. Newly available data in 2021 provide better estimates of the size and characteristics of the youth population. Youth ages 13-17 comprise a larger share of the transgender-identified population than previously estimated, currently ~18% previously ~10%
- For information on US state and regional percentages of transgender adults, please see <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>

Gender Nonbinary Adultsⁱⁱ and Youthⁱⁱⁱ

- ~11% of the LGBTQ adults (age 18-60 years) identify as nonbinary.
- ~26% of LGBTQ youth sampled identified as nonbinary. An additional 20% reported that they are not sure or are questioning if they are nonbinary.
- 35% of youth ages 13-21 in 2018 knew someone who uses gender-neutral pronouns.^{iv}
- 42% of nonbinary LGBTQ adults identified as transgender.
- Nonbinary adults reported identifying as queer (31%), bisexual (17%), pansexual (17%), or asexual (14%).
- 50% of youth who identified as nonbinary also identified as transgender; an additional 20% were not sure or questioning if they were transgender.

- The most common term used by youth identifying as nonbinary was “nonbinary” (72%). Other commonly used gender identity labels were queer (29%), gender non-conforming (27%), genderfluid (24%), genderqueer (23%), androgynous (23%), agender (15%), demigirl (10%), demiboy (8%), genderflux (4%), and bigender (4%).
- 17% of youth who were assigned male at birth identified as nonbinary and 28% of youth who were assigned female at birth identified as nonbinary.
- Most nonbinary youth reported being attracted to multiple genders. 28% were bisexual, 27% were pansexual, 22% were queer, 14% were lesbian, 6% were gay, 2% were questioning their sexual orientation, and less than 1% described their sexual orientation as straight.
- Youth between the ages of 13–17 (26%) identified as nonbinary at comparable rates to those ages 18–24 (27%).
- Nonbinary youth racial/ethnic identity rates were relatively similar: multiracial (30%), Native/Indigenous (27%), Asian American/Pacific Islander (25%), Black (25%), White (25%), and Latinx 23%.
- Nonbinary adult racial/ethnic identities: White (58%), multiracial (16%), Latinx (15%), and Black (9%).

ⁱ Herman, J.L., Flores, A.R., O’Neill, K.K. (2022). *How Many Adults and Youth Identify as Transgender in the United States?* The Williams Institute, UCLA School of Law <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>

ⁱⁱ Wilson, B. D. M. & Meyer, I. H. (2021). *Nonbinary LGBTQ Adults in the United States*. Los Angeles: The Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Nonbinary-LGBTQ-Adults-Jun-2021.pdf>

ⁱⁱⁱ Trevor Project. (2021), *Trevor Project Research Brief: Survey of Nonbinary Youth*. https://www.thetrevorproject.org/wp-content/uploads/2021/07/Diversity-of-Nonbinary-Youth_-July-Research-Brief.pdf

^{iv} Parker, K., Graf, N., & Igielnik, R. (2019). *Generation Z Looks a Lot Like Millennials on Key Social and Political Issues*. Pew Research Center’s Social & Demographic Trends Project. <https://www.pewresearch.org/social-trends/2019/01/17/generation-z-looks-a-lot-like-millennials-on-key-social-and-political-issues/>