

Ensuring Equity & Protection for LGBTQ Youth in Juvenile Court

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Why is this topic important to what we do?

Who is represented here today?

Social workers

Advocates

Judges

Probation

Allies

Policy Makers

Educators

Attorneys

CASAs

Youth

Therapists

Decision Makers

Eric's perspective...

Legal Rights of LGBT Youth
under the Supervision of the
Juvenile Court

All foster children and all persons providing their care and services must:

- Not be discriminated against or harassed based on their actual or perceived sexual orientation or gender identity.
- Have equal access to all available services, placement, care, treatment and benefits.

W&I Code §§ 16001.9(a) & 16013(a)

Transgender and gender non-conforming students may participate in sex-segregated programs, sports, activities, and use restrooms and locker rooms, aligned with their gender identity.

Education Code § 221.5(f)

Students and school employees are protected against discrimination based on their perceived sexual orientation or gender identity at any nonreligious school receiving state funds.

Education Code §§ 200-221.1

Laws and Policies Protecting LGBTQ Youth from Discrimination

Federal Laws and Policies Protecting LGBTQ Youth from Discrimination

1st Amendment
Limits the right of public systems to censor a young person's speech or expression. Protects the right of a youth to be "out", display symbols of pride, and wear clothing consistent with their gender. The 1st Amendment also gives youth the right to be free of religious indoctrination.

14th Amendment-Due Process Protections (Right to Safety)
The right to "reasonably safe conditions of confinement" and "freedom from unreasonable bodily restraint." Youth have a right to physical and emotional safety, adequate food, shelter, clothing and appropriate medical care.

14th Amendment-Equal Protection
Requires public systems to protect LGBTQ youth to the same extent as other youth and respond to harassment. It also provides equal treatment in the provision of placements and services and equal access to programs.

California Laws and Policies Protecting LGBTQ Youth from Discrimination

Civil Rights Act of 2007-AB 11
LGBT Californians receive protections from discrimination in state-funded programs and activities.

Nondiscrimination in State Programs and Activities- SB 1441
LGBT Californians protected from discrimination in state-operated and funded services, activities and programs.

Juvenile Justice Safety and Protection Act- SB 518
Protects LGBT youth against discrimination and harassment in the state's juvenile justice facilities.

Omnibus Hate Crimes Act- SB 1234
Makes the state definition of a hate crime consistent throughout law to protect all Californians.

Sexual Orientation Change Efforts- SB 1172
Prohibits mental health professionals from using "conversion therapy" to attempt to change a minor client's sexual orientation.

Providing Safe, Supportive Homes for LGBT Youth- AB 1856
Requires foster care administrators, group home staff and foster parents to complete training on LGBT cultural competency, sensitivity and best practices with a goal of improving care and outcomes for LGBT youth in foster care.

California Foster Care Nondiscrimination Act- AB 458
All foster children in California have the right to fair and equal access to all available child welfare services, placements, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived sexual orientation or gender identity.

All persons engaged in providing care and services to foster children shall have fair and equal access to all available programs, benefits, services, and licensing processes, and shall not be subjected to discrimination or harassment on the basis of their clients or their own, actual or perceived sexual orientation or gender identity.

County child welfare departments, group home facilities, and foster family agencies have a legal responsibility to provide care, placement, and services to foster children, family members, foster parents, and service providers without discriminating on the basis of actual or perceived sexual orientation or gender identity.

School Success and Opportunity Act (AB 1266)
Protects the rights of transgender and gender non-conforming students to participate in sex-segregated programs and activities that are aligned with their gender identity. This right includes participation on sports teams and in physical

LGBTQ 101: Concepts and Terminology

What is "SOGIE"?

Sexual Orientation, Gender Identity, and/or Gender Expression =SOGIE

- **Sexual Orientation** is an emotional, romantic, and/or sexual attraction to others (e.g., lesbian, gay, bisexual, asexual) Which is different from...
- **Gender Identity** is a person's internal identification or self-image as male, female, something in between, non binary as outside of the male/female binary
- **Gender Expression** describes how a person communicates their gender to others. People express and interpret gender through clothing, hairstyle, speech, behavior, and/or other physical attributes

Common Sexual Orientation Terms

- **Lesbian** - Describes a woman who is romantically, emotionally and physically attracted to other women
- **Gay** - Describes a person who is attracted to individuals of the same gender. While historically used to refer to men, it is often used to refer to women attracted to other women as well
- **Bisexual**- Describes an individual romantically, emotionally and physically attracted to both men and women

Common Sexual Orientation Terms

- **Asexual** - Describes a person who does not feel sexual attraction to people of any gender
- **Straight**- Describes a man who is attracted to women or a woman who is attracted to men
- **Questioning** - Describes a person who is unsure of, or in the process of discovering, their sexual orientation or gender identity
- **Queer** - An umbrella term used to refer to all LGBTQ people; the term can be a political statement as well as an identity, seeking to expand upon limited sexual and gender-based categories.

Common Gender Identity Terms

- **Transgender**- Describes a person whose gender identity does not match the sex they were assigned at birth.
- **Cisgender** - Describes a person whose gender identity matches their sex assigned at birth
- **Genderqueer** - Describes a person who does not subscribe to conventional gender distinctions but identifies with neither, both, or a combination of male and female
- **Agender** - Describes someone who does not identify with any gender

Common Gender Expression Terms

- **Feminine/Masculine**
- **Gender conforming (GC)** - Describes a person who expresses gender in a manner that is consistent with societal norms for their gender
- **Gender nonconforming (GNC)** - Describes a person who does not subscribe to gender expression or roles imposed by society

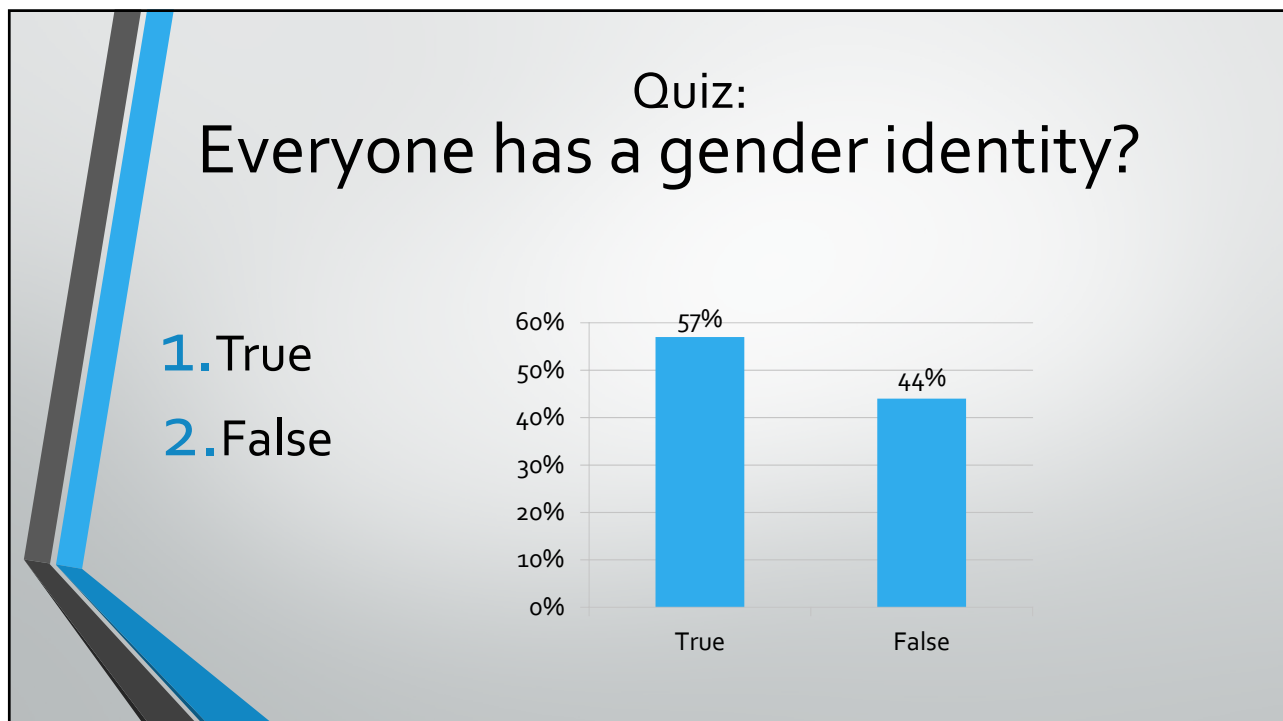
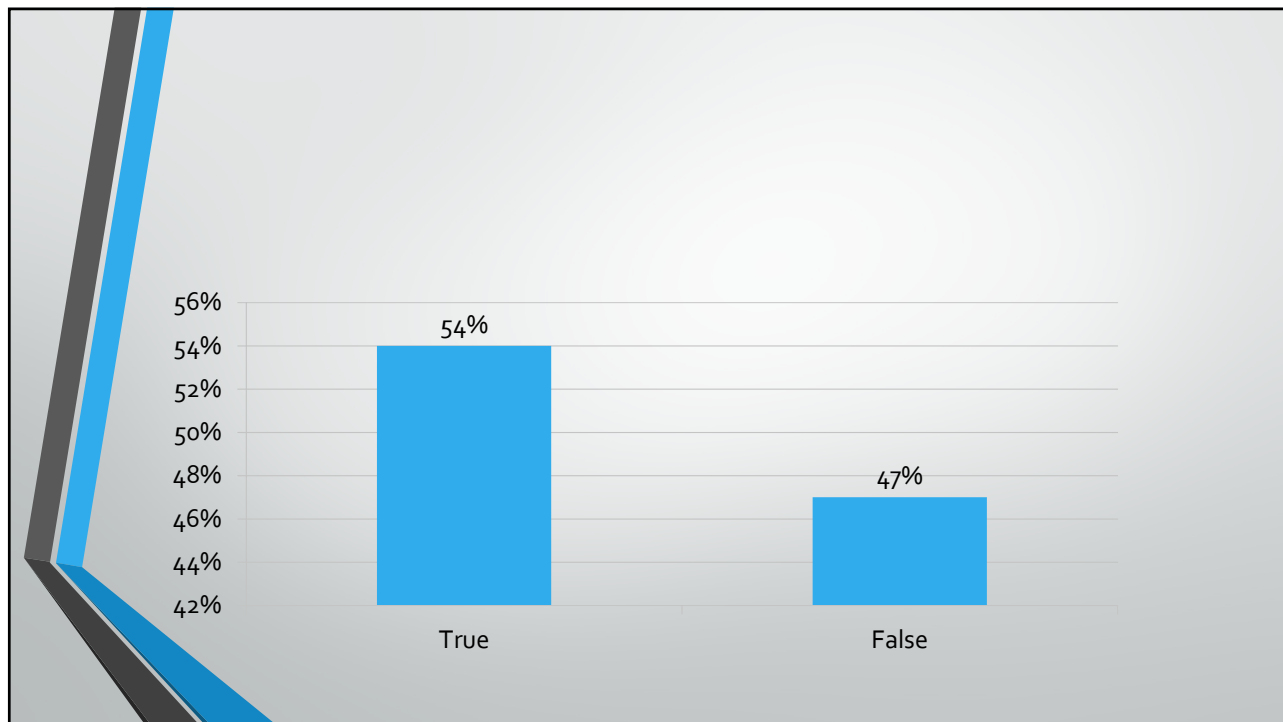
Youth Research Quiz

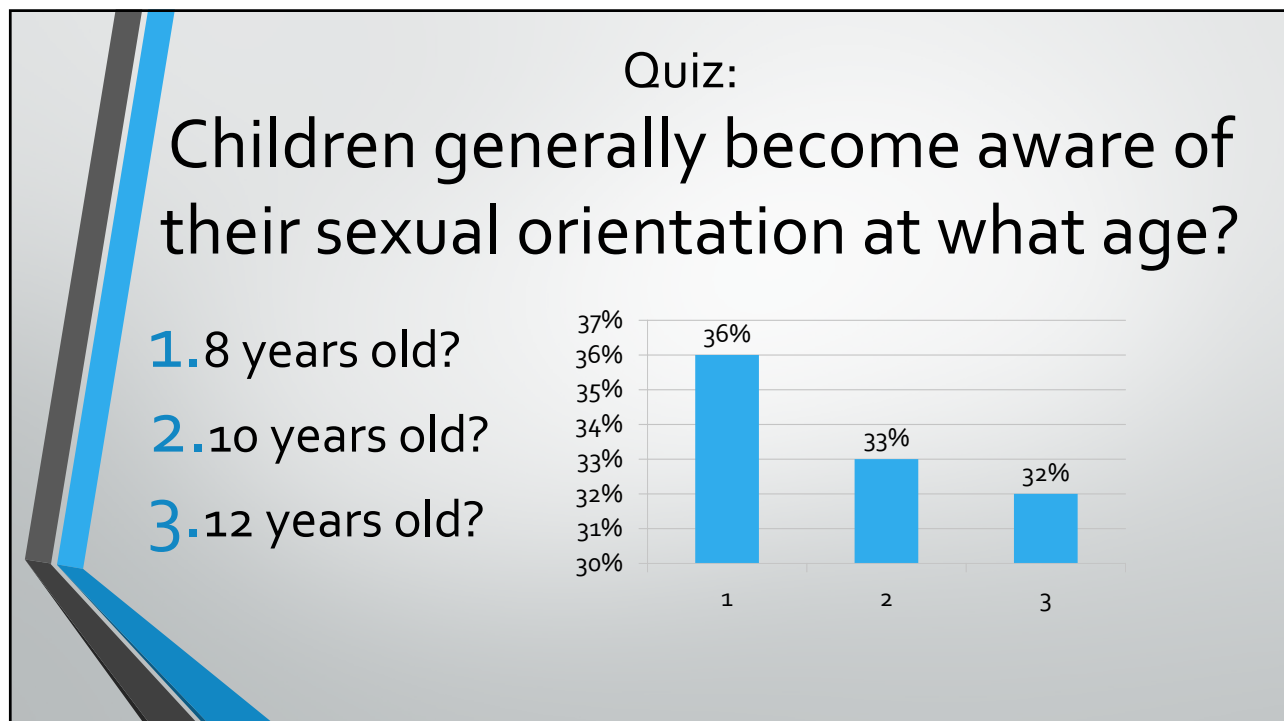
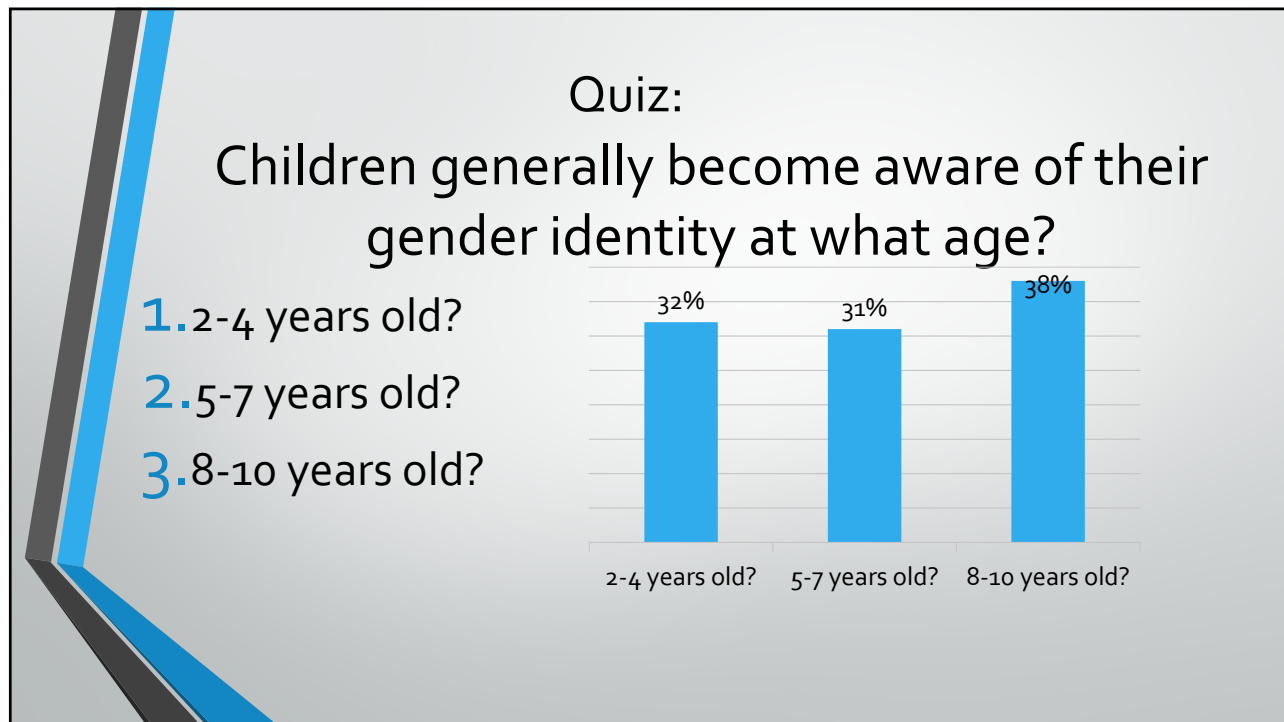
- Check your awareness level
- Knowledge of unintended consequences
- Baseline for your movement forward

Quiz:

Everyone has a sexual orientation?

1. True
2. False

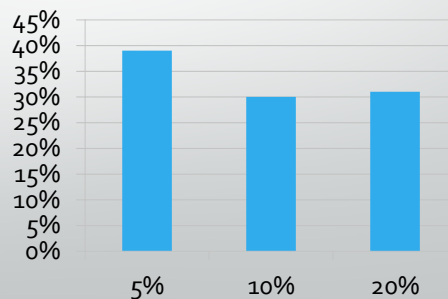




Quiz:

What percentage of youth in detention facilities in CA is lesbian, gay, bisexual, questioning and gender nonconforming or transgender (LGBTQ/GNCT)?

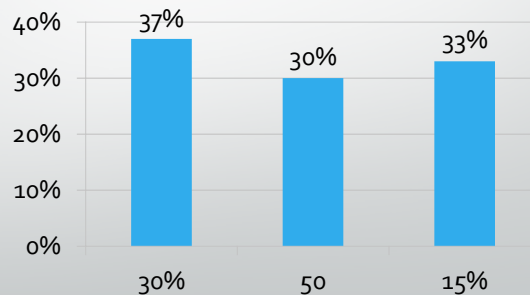
1. 5%
2. 10%
3. 20%



Quiz:

What percentage of GIRLS in detention facilities in CA is lesbian, bisexual, questioning, gender nonconforming or transgender?

1. 30%
2. 50
3. 15%



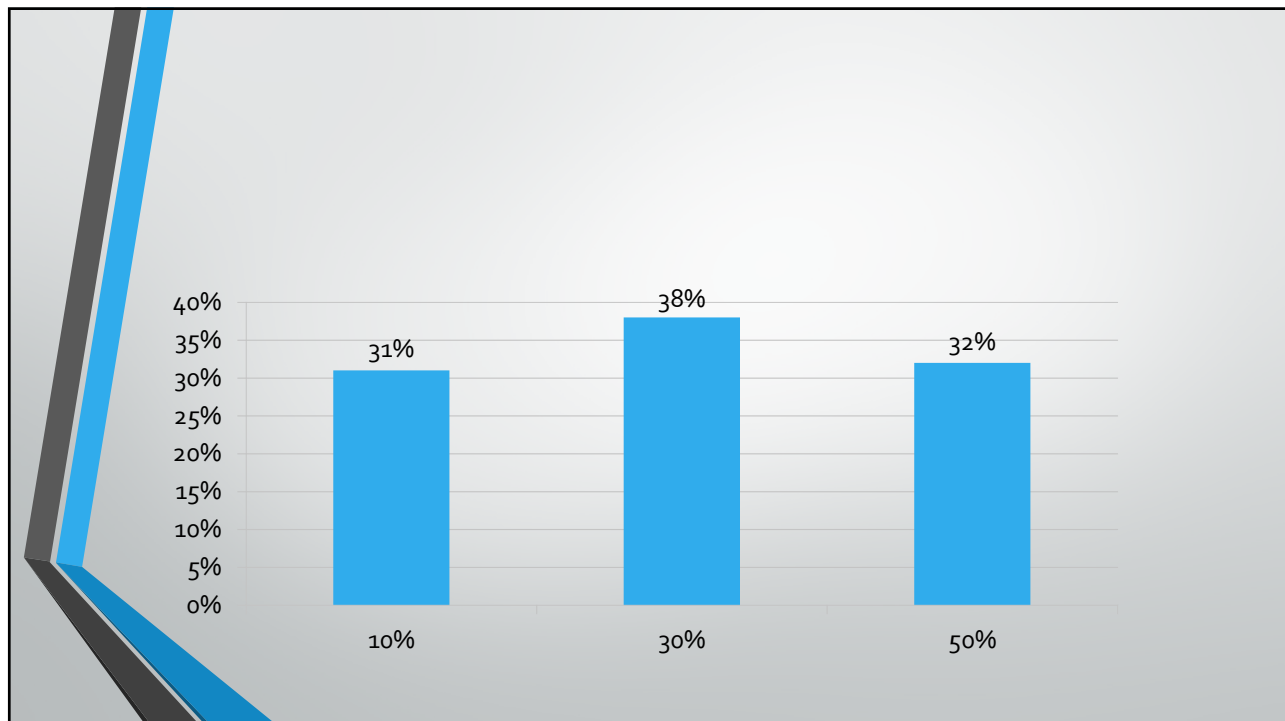
Quiz:

Approximately what percentage of LGBT youth missed a day of school in the last month because they felt unsafe at school?

1. 10%

2. 30%

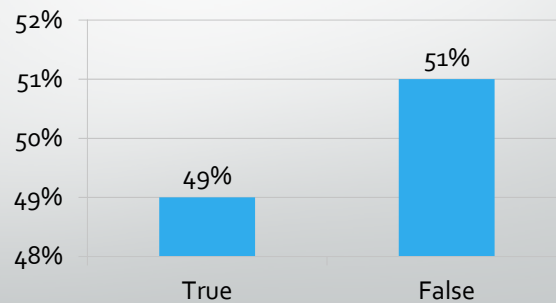
3. 50%



Quiz:

Nonheterosexual girls are at greater odds of experiencing disproportionate school and juvenile justice sanctions than nonheterosexual boys?

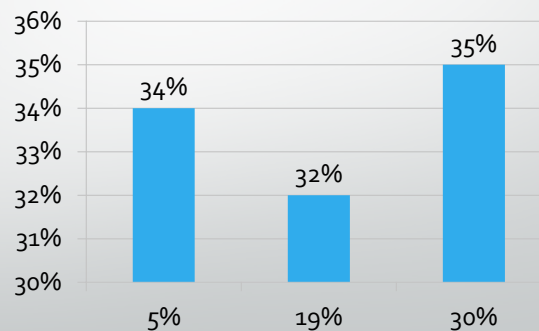
1. True
2. False



Quiz:

What percentage of youth in foster care is LGBTQ?

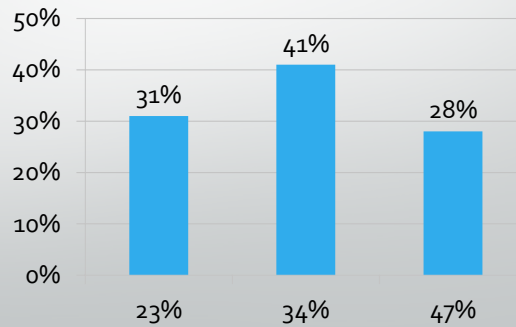
1. 5%
2. 19%
3. 30%



Quiz:

What percentage of gender nonconforming girls in the juvenile justice system report having been placed in a group home because someone was hurting them?

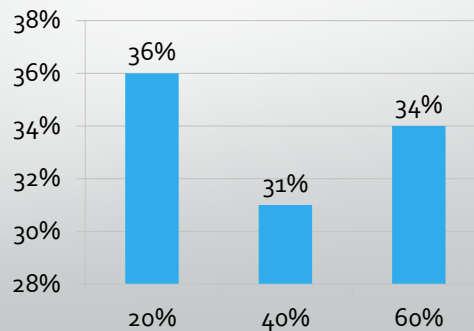
1. 23%
2. 34%
3. 47%

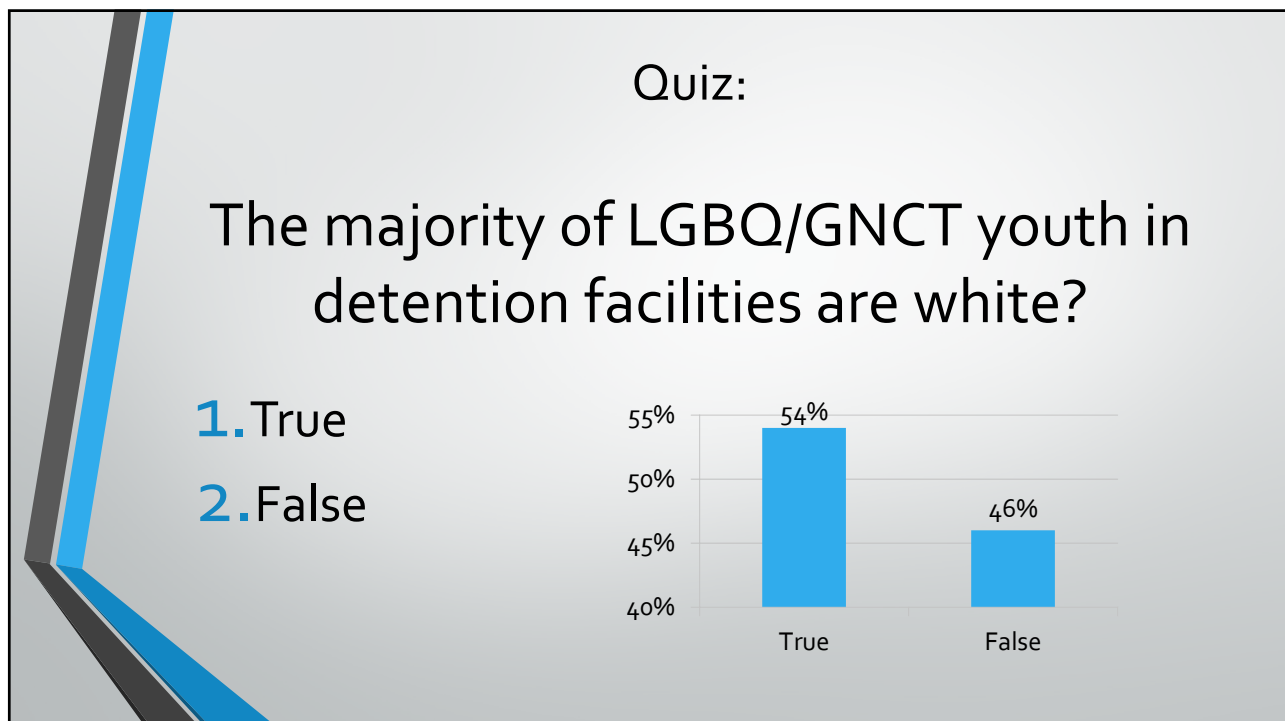
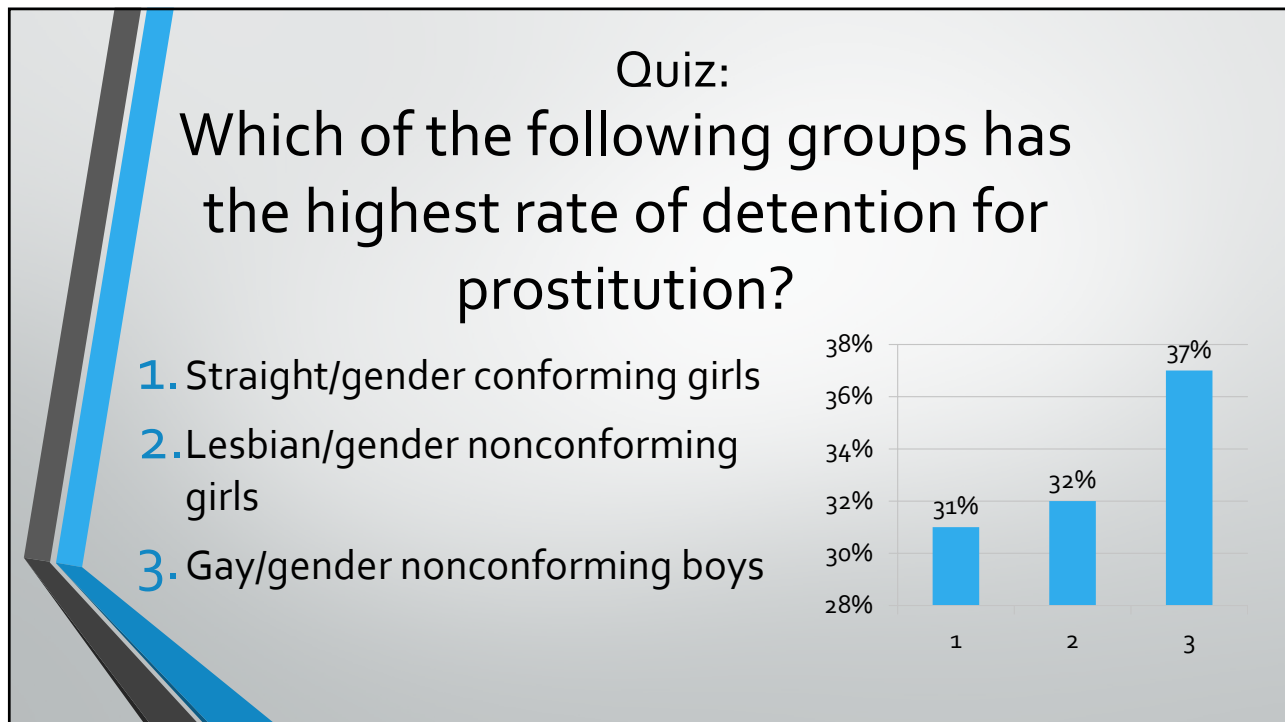


Quiz:

Approximately what percentage of homeless youth is LGBT?

1. 20%
2. 40%
3. 60%





Interviewing Foster Children and Youths

- Don't Assume
- Create a Safe Space
- Cultural Issues
 - Perceptions of Hegemony
 - Religious
 - Family Acceptance

Interviewing Foster Children and Youths

- Motivational Interviewing
- Gaining Agency
- Creating a Logical Family

Interview Questions for Foster Children and Youths

- Who is important in your life and why?
- Who are you attracted to? (If age appropriate ≥ 10)
- What are your activities when not in school?
 - Video Games? -On-line habits?
- Are there any conflicts at home?
- Have you been or are you being harassed or bullied?

Disclosure of Confidential Information

Therapist:

- Disclosure to Foster Parents, Probation, or CWW: Civil Code § 56.103(e)
 - But not ≥ 12 : Civil Code § 56.103(h); Family Code § 6924(b)
- No disclosure to parents unless court finds no detriment: H&S § 123116
 - No disclosure to parents if detriment: Health & Safety § 123115
- Additional disclosures by written release
 - Not signed by parents unless court finds no detriment: CC § 56.106
- Must Assert Privilege: Evidence Code § 1015
- Must Disclose to Minor's Counsel: Welfare & Institutions Code § 317(f)

Disclosure of Confidential Information

Attorney: Bound by Client Confidentiality

- Exception: Business & Professions Code § 6068(e)(2)

Child Welfare Worker:

- No further disclosure: Civil Code § 56.103(e)

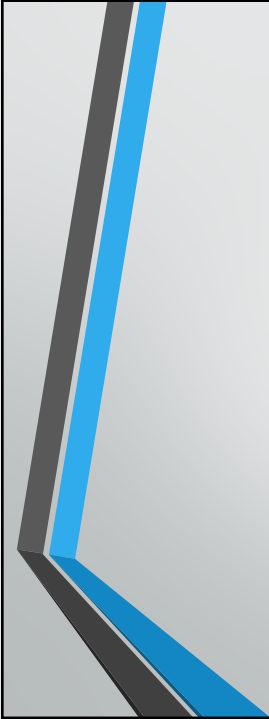
The screenshot shows a PDF document titled "Impact Justice" with the subtitle "LGBTQ Youth in the Child Welfare and/or Juvenile Justice Systems Interviewing Tool". The document is displayed in an Adobe Reader window. The main content is a section titled "Guidelines for Effectively Engaging Youth" which includes three bullet points:

- Remind youth that you ask everyone the same questions and that you do not make assumptions about people (mention this before every interview, not just before you ask questions regarding sexual orientation, gender identity, and/or gender expression [SOGIE]).
- Your goal is to create a safe space for youth to disclose their SOGIE at their own pace and on their own terms; hesitancy to disclose a SOGIE identity in the beginning is common given the harassment and discrimination many LGBTQ youth have encountered.
- Be mindful of your own beliefs, cultural norms, and gaps in knowledge surrounding sexual orientation, gender identity, and gender expression.

Below the third bullet point, the text "Remember 'silent' communication: Ensure that your physical space is welcoming" is partially visible.



Ensuring Equity in Juvenile Court Best Practices



Best practice #1:
Consider that the youth in your
courtroom may be LGBTQ.

Best practice #1: Consider that the youth in your courtroom may be LGBTQ.

- Do not make assumptions based on how the youth looks or acts.
- Ask the youth or youth's attorney their sexual orientation or gender identity before a case is called.
- * Be careful not to "out" a youth unnecessarily.
- Do not discuss a youth's sexual orientation or gender identity in open court without the youth's permission. Counsel who can discuss with you and obtain the youth's permission ahead of time.
- Recommendations and Orders for services, placements, and schools should promote and facilitate communication and overall health of LGBTQ youth and their families.

**Best practice #2:
Ask and use the name and pronoun the
youth prefers in court and court
documents.**

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Ask and use the name and pronoun the youth
prefers in court and court documents.**

- Set an expectation or agree with youths' attorneys, social workers, probation officers, that if there is a different name or pronoun that the youth would like to have used, that they notify the court off the record or at sidebar before the case is called.
- Ensure that court reports and documents also reflect the youths' preferred name and pronoun. Explain to the youth that their legal name and sex assigned at birth may still have to be reflected in court documents/official file.
- Be open to a petition by the youth's attorney for a legal name change.

**Best practice #3:
Ensure that LGBTQ youth are safe and
respected in their placement
or at home.**

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During drafting and review of the court documents, court partners should discuss whether:

- The youth has been placed based on their safety needs and not solely on the basis of their actual or perceived LGBTQ status.
- Information about a youth's SOGIE may be relevant to determine whether the youth is at risk of harassment or assault by others, but is not evidence that the youth presents a safety risk to others.
- Staff must not consider a youth's LGBTQ identity or gender nonconformity as an indication that the youth is likely to be predatory.
- The placement allows transgender and gender nonconforming youth to wear clothing and hairstyles that are consistent with their present gender identity or gender expression.

Best practice #3: Ensure that LGBTQ youth are safe and respected in their placement or at home.

- The juvenile facility has a policy and procedure manual that creates a safe environment for and equal access to all available services by LGBTQ youth.
- Staff at the juvenile facility is accommodating transgender youth whose physical or emotional condition justifies privacy while showering, performing bodily functions or changing clothing.
- The placement explicitly prohibits discrimination and mistreatment of youth on the basis of actual or perceived sexual orientation, gender identity and gender expression.
- LGBTQ youth not housed in units reserved for "sexual offenders" unless they have a documented history of sexual assault or have been adjudicated delinquent of a sexual offense.
- The youth has a history of running away from placements due to lack of safety or harassment. Obtain information from youths' CASAs, foster parents, friends, siblings, etc. to evaluate.

Best practice #4:
Ensure that LGBTQ youth are safe at school and are not facing harassment, violence, or discrimination.

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- Determine if the youth is safe in school and en route to and from school. Enquire if anyone within the school is connected with the youth and may be aware of this.
- Is the school the best fit or supportive for the youth and engage Parents/Educational Rights Holders to discuss.
- The youth has a history of chronic absenteeism or school changes due to lack of safety or harassment. Obtain information from youths' CASAs, foster parents, friends, siblings, etc. to evaluate.

Best practice #5:
Order services in LGBTQ youths' case plans that are appropriate, affirming and delivered by staff competent in serving LGBTQ youth.

Best practice #5: Services in LGBTQ youths' case plans are appropriate, affirming and delivered by staff competent in serving LGBTQ youth.

Consider, discuss/insure that they are provided by:

- agencies that ensure staff, contractors, and volunteers receive ongoing training on best practices in working with LGBTQ youth.
- agencies that have written policies prohibiting physical, sexual or verbal harassment or abuse of youth on the basis of SOGIE and requiring fair and respectful treatment of LGBTQ youth, as well as accessible grievance procedures
- qualified medical personnel who adhere to the relevant medical standards of care for transgender youth. This includes the provision of medically necessary transition-related health care.

Best practice #5: Services in LGBTQ youths' case plans are appropriate, affirming and delivered by staff competent in serving LGBTQ youth.

- Do not include attempts to change an LGBTQ youth's sexual orientation, gender identity or expression, or communicate to the youth that they can and should change their SOGIE.
- Actively engage the parents and families of LGBTQ youth to help them decrease rejection and increase support of their LGBTQ children
- The youth is encouraged and permitted to participate in activities consistent with their interests and identified communities. Provide information regarding local resources

Resources on the Conference Website

- Bench Reference Guide
- Terminology Cheat Sheet
- LGBTQ Youth in the Child Welfare and Juvenile Justice Systems Interviewing Tool
- Laws and Policies Protecting LGBTQ Youth from Discrimination Sheet
- Juvenile Court Best Practices Handout
- Youth Research Quiz and Answers
- Websites Links: Family Acceptance Project, Fostering Transitions (Joint Initiative of Child Welfare Leave and Lambda)-Tools to Support LGBTQ Youth in Care

An Invitation

- Be a leader in your agency and court team
- Raise your own and others' awareness by sharing what you have learned today & educate others to enhance their understanding
- Practice and become comfortable with the terminology and discussion before being on the record with youth in your courtrooms.
- Promote acceptance and understanding