

October 3, 2022

NSTC Subcommittee on Equitable Data
Office of Science and Technology Policy
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20504

Submitted via email: equitabledata@ostp.eop.gov

Re: Request for Information; Federal Evidence Agenda on LGBTQI+ Equity (August 24, 2022) [87 FR 52083]

Dear Members of the Subcommittee on Equitable Data:

Thank you for the opportunity to respond to the Request for Information (RFI) at 87 FR 52083 on *Federal Evidence Agenda on LGBTQI+ Equity*. Family Equality, Lambda Legal, and the National Center for Lesbian Rights appreciate the opportunity to share why LGBTQI+ data inclusion is essential for LGBTQI+ children, youth, and families in the child welfare system and for LGBTQI+ youth involved with the juvenile justice system. Our organizations are also in full support of the priorities and recommendations submitted in a response by the Center for American Progress, the Movement Advancement Project, and other movement partners which further highlights the need for comprehensive SOGI data collection by the federal government.

Understanding the challenges faced by the uniquely vulnerable populations of LGBTQI+ youth in state custody, families of origin, and foster and adoptive families is vital to effectively addressing their needs and creating an equitable system. Put simply, it is difficult to solve problems we cannot quantify. Consistent collection of aggregated sexual orientation, gender identity, and variations in sex characteristics/intersex (SOGI) data is necessary to inform policy and direct resources at the federal and state levels. This response addresses specific questions from the RFI, but we first describe the benefits of collecting quality data on LGBTQI+ youth and families and how data can reduce preventable system involvement (driven by bias and societal inequities) of these populations, increase effectiveness of interventions, and make policy that advances equity. By collecting data on LGBTQI+ youth and families in the child welfare system and youth in the juvenile justice system, the federal government could:

A. Reduce the number of youth coming into care where:

1. Potential bias by child protective investigators may contribute to the disproportionate removal of children from LGBTQI+ parents;
2. Opportunities exist to provide support, education, and safety plans to families who are rejecting their child's identity or expression, allowing children to safely remain at home, and expand the utilization of effective models to reduce family rejection, such as the Family Acceptance Project's Family Support Model; and
3. Data-driven diversion programs, alternatives to detention, and re-entry programs can inform juvenile justice practice.

- B. Reduce harm to children and youth in state custody by:**
 - 1. Understanding areas of greatest need and providing additional open and affirming services and affirming providers in those areas;
 - 2. Ensuring that LGBTQI+ youth are placed in appropriate, affirming settings and do not experience additional trauma; and
 - 3. Decreasing incarceration and placement in congregate care settings.

- C. Reduce time in care waiting for reunification or permanency through guardianship or adoption by:**
 - 1. Collecting data to measure the effectiveness of family acceptance programs to promote reunification or kinship placements;
 - 2. Collecting data to better understand the challenges faced by LGBTQI+ youth and to develop evidence based best practices that can be used to train prospective adoptive families and foster families on LGBTQI+ youth needs; and
 - 3. Using data on the experiences of LGBTQI+ youth in care to help staff identify qualified care placements, foster parents, or prospective adoptive parents who are trained on LGBTQI+ youth needs.

- D. Reduce system re-entry due to harm resulting from caregivers' rejecting behaviors related to their child's SOGI by:**
 - 1. Understanding the number of youth who re-enter the system post-reunification, post-adoption, or post-incarceration related specifically to their SOGI identification or expression; and
 - 2. Using this data to develop improved hiring and licensing and certification practices, targeted interventions, appropriate training, and support systems prior to placement finalization, during temporary placements, and in post-adoption services.

- E. Improve child and family well-being overall by using comprehensive data to better understand the needs of LGBTQI+ youth and families and providing the appropriate support to reduce trauma and harm.**

As noted in Executive Order 14075, it is imperative that LGBTQI+ data on child welfare is collected on a national level for the advancement of equity, protection of vulnerable children and families, and to ensure the government is a responsible financial steward.

I. Disparities faced by LGBTQI+ individuals that could be better understood through Federal statistics and data collection.

1.1. What disparities faced by LGBTQI+ people are not well-understood through existing Federal statistics and data collection? Are there disparities faced by LGBTQI+ people that Federal statistics and other data collections are currently not well-positioned to help the Government understand?

Data collection as to LGBTQI+ Youth

Available data, based on point in time studies, shows that LGBTQI+ youth are disproportionately represented in the foster care system compared to their presence in the general population, making up one in three youth in care. Once in the system, LGBTQI+ youth experience mistreatment by caregivers at higher rates than their non-LGBTQI+ counterparts, in addition to higher rates of multiple placements,

educational instability, including multiple school changes, and exiting foster care to homelessness.¹ LGBTQI+ youth have reported being segregated, stigmatized, isolated, and institutionalized based on their gender expression and sexuality.² LGBTQI+ youth in care also suffer from worse health outcomes, including disproportionately high levels of suicidal ideation and attempts.³ Similarly, studies show that LGBTQI+ youth are overrepresented in juvenile justice settings compared to their non-LGBTQ+ peers and experience higher rates of harm in secure settings⁴ and are over-represented in populations of youth who are dually involved in the child welfare and juvenile justice systems. Although, as addressed more fully below, federal data collection does not currently include information on LGBTQI+ youth in care, government systems are well-positioned to collect SOGI information for the children in their custody and must do so to identify and address mistreatment and poor outcomes.

Data collection as to LGBTQI+ prospective and current foster and adoptive parents

Given that same-sex couples are seven times more likely to foster and adopt than their different-sex counterparts, members of the LGBTQI+ community represent a large pool of prospective foster and adoptive parents.⁵ This pool of parents remains largely untapped, partly due to agencies turning away qualified LGBTQI+ individuals, which prevents, deters, and delays them from providing safe and loving homes to children in need. A national data set with information on prospective and current LGBTQI+ foster and adoptive parents would provide the federal government with an understanding of which states license higher numbers of LGBTQI+ foster and adoptive parents and which states need improvement, including the impact of discriminatory state-level policies. At the state level, data will assist agencies in determining a baseline and allow for development of more robust and targeted recruitment to tap into these resource families. Additionally, data collection on retention and resource utilization could be connected to other metrics, such as the efficacy of training. Both at the national and state level these efforts will result in a larger, more diverse pool of parents who can meet the needs of children in foster care and provide permanency to some of the most vulnerable youth in care.

¹ Laura Baams, Bianca D.M. Wilson, & Stephen T. Russell, LGBTQ Youth in Unstable Housing and Foster Care, 143(3): e20174211 Pediatrics (2019), available at: <https://pediatrics.aappublications.org/content/pediatrics/early/2019/02/07/peds.2017-4211.full.pdf>; Megan Martin, Leann Down, & Rosalyn Erney, Out of the Shadows: Supporting LGBTQ youth in Child Welfare Through Cross-System Collaboration, Center for the Study of Social Policy (2016), available at: <https://cssp.org/resource/out-of-the-shadows/>; Theo G. M. Sandfort, Experiences and Well-Being of Sexual and Gender Diverse Youth in Foster Care in New York City : Disproportionality and Disparities, Administration for Children’s Services (2020), available at: <https://www1.nyc.gov/assets/acs/pdf/about/2020/WellBeingStudyLGBTQ.pdf>; Marlene Matarese, Angela Weeks, Elizabeth Greeno, & Paige Hammond, The Cuyahoga youth Count: A Report on LGBTQ+ Youth Experience in Foster Care, The Institute for Innovation and Implementation (2021), available at: <https://theinstitute.umaryland.edu/institute-news/study-finds-overrepresentation-of-lgbtq-youth-in-midwestfoster-care-system.php>.

² Brandon Andrew Robinson, Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality, 96 CHILD WELFARE 2, at 34 (2018).

³ Julia Raifman, et al., “Sexual Orientation and Suicide Attempt Disparities Among US Adolescents: 2009–2017,” 145 PEDIATRICS 3, (March 1, 2020), available at <https://pediatrics.aappublications.org/content/145/3/e20191658>.

⁴ OJJDP Listening Session Report Creating and Sustaining Fair and Beneficial Environments for LGBTQ Youth, Office of Juvenile Justice and Delinquency Prevention, (June 2016), available at: https://facji.ojp.gov/sites/g/files/xyckuh291/files/media/document/ojjdp_listening_session_report_creating_and_sustaining_fair_and_beneficial_environments_for_lgbtq_youth.pdf; 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(2) Journal of Gender, Social Policy & the Law 243-261 (2016), available at:

<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1679&context=jgspl>

⁵ Danielle Taylor, *Same-Sex Couples are More Likely to Adopt or Foster Children*, United States Census Bureau (2020), available at: <https://www.census.gov/library/stories/2020/09/fifteen-percent-of-same-sex-couples-have-children-in-their-household.html>. (last visited Dec 10, 2020).; Shoshana K. Goldberg & Kerith J. Conron, How Many Same-Sex Couples in the U.S. Are Raising Children?, The Williams Institute (July 2018), available at: <https://williamsinstitute.law.ucla.edu/publications/same-sex-parents-us/>; *Expanding Resources For Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care*, Evan B. Donaldson Adoption Institute at 12 (Sept. 2008) (“Donaldson Report”), available at: <https://docplayer.net/63117222Policy-practice-perspective.html>.

Data Collection on Families of Origin

Discrimination places LGBTQI+ families of origin, in particular, Black and American Indian/Alaska Native (“AIAN”) families, and other families of color at greater risk of involvement with the child welfare system. Families with low incomes or with a parent or parents living with a disability are also disproportionately system-involved compared to their presence in the general population. In addition, at least one state, Texas, now explicitly target the parents of transgender children receiving gender affirming medical care for investigation. Discrimination also prevents children from maintaining ties to relatives, including being placed with kin. A 2016 study showed that lesbian and bisexual mothers are four times more likely to have lost their children to the state in child welfare proceedings than their non-LGB counterparts; for Black, AIAN, and other families of color, this compounds the disproportionality they already face in removals.⁶ Although a lack of nationwide data collection creates a difficulty in understanding the true extent and impact of discrimination, Family Equality has received numerous stories from LGBTQI+ people who have been turned away from kinship care because of their sexual orientation or gender identity.⁷ Collecting SOGI data on families of origin and kin is essential to understanding the extent of bias and discrimination in child welfare and to ensuring children in care are given every possibility to thrive as children experience better outcomes with kin.⁸

1.2 Are there community-based or non-Federal statistics or data collection that could help inform the creation of the Federal Evidence Agenda on LGBTQI+ Equity? Are there disparities that are better understood through community-based research than through Federal statistics and/or other data collection?

Given the lack of nationwide SOGI data collection in the child welfare system, the significant known disparities faced by LGBTQI+ youth and families were found in short-term, local studies with unknown national generalizability. The studies listed below, some of which were federally funded, are examples of such. They provide valuable snapshots of the lived experiences of individuals from specific areas during discrete periods of time. However, such localized, short-term studies are NOT a substitute for the systematic national data collection needed for foster care programs to identify and remedy inequities faced by, and improve outcomes for, system involved LGBTQI+ children and families. We suggest the following high-quality snapshot studies serve as models in developing effective, culturally informed data collection, handling and analysis protocols to obtain high-quality nationwide SOGI data on child welfare system-involved youth, in furtherance of the Federal Evidence Agenda on LGBTQI+ Equity

- [Los Angeles, CA Study](#) - Sexual and Gender Minority Youth in Foster Care, Assessing Disproportionality and Disparities in Los Angeles

⁶ Kathi L.H Harp & Carrie B. Oser, *Factors associated with two types of child custody loss among a sample of African American mothers: A novel approach*, 60 SOCIAL SCIENCE RESEARCH 283-296 (2016).; see, *Disproportionality and Race Equity in Child Welfare*, NATIONAL CONFERENCE OF STATE LEGISLATURES (2021), available at: <https://www.ncsl.org/research/human-services/disproportionality-and-race-equity-in-child-welfare.aspx> *Disproportionality in Child Welfare Fact Sheet*, NATIONAL INDIAN CHILD WELFARE ASSOCIATION, available at: <https://www.nicwa.org/wp-content/uploads/2019/10/2019-AIAN-Disproportionality-in-Child-Welfare-FINAL.pdf>; Alicia Summers, *Disproportionality Rates for Children of Color in Foster Care*, National Council of Juvenile and Family Court Judges (2019), available at: <https://www.falmouthinstitute.com/files/LW060/NCJFCJ%202014%20Disproportionality%20TAB%20Final.pdf>; Rowena Fong, Georgina Petronella, *Underrepresented Populations in the Child Welfare System: Asian American and Native Hawaiian Islander Populations*, Child Maltreatment (Contemporary Issues in Research and Policy), vol 11 (2021), available at: https://link.springer.com/chapter/10.1007/978-3-030-54314-3_73-030-54314-3_7

⁷ See Every Child Deserves a Family, *Adoption & Foster Care Stories*, available at: <https://everychilddeservesafamily.com/stories>; see also, Family Equality, *Story Library Archive*, available at: <https://www.familyequality.org/stories/>.

⁸ Child Focus, *Children in Kinship Care Experience Improved Placement Stability, Higher Levels of Permanency, and Decreased Behavioral Problems: Findings from the Literature*, Child Focus, available at: http://grandfamilies.org/Portals/0/4%20Kinship%20Outcomes%20Review%20Handout_1.pdf.

- [Cuyahoga County, OH Study](#) - The Cuyahoga Youth Count: A report on LGBTQ+ Youth Experience in Foster Care
- [New York City, NY study](#) - Experiences and Well-Being of Sexual and Gender Diverse Youth in Foster Care in New York City
- [Factors Associated with Two Types of Child Custody Loss Among a Sample of African American Mothers: A Novel Approach](#)
- [NCSL Study](#) - Disproportionality and Race Equity in Child Welfare
- [NIH Study](#) - Are Sexual Minority Youth Overrepresented in Foster Care, Child Welfare, and Out-of-Home Placement? Findings from Nationally Representative Data

1.3 Community-based research has indicated that LGBTQI+ people experience disparities in a broad range of areas. What factors or criteria should the Subcommittee on SOGI Data consider when reflecting on policy research priorities?

Collecting data on how and by whom cases are reported, how reports are investigated, how decisions on the handling of reports are made, rates of child removal and adult exclusion (via protective order), number of placements, number of school changes, sibling separation, time to permanency, provision of counsel to youth and parents, termination and adoption rates, re-entry to care rates, subsequent outcomes for emancipated and formerly system-involved youth, intersections of race, disability and LGBTQI+ status, cultural competence of caregivers and staff, and experiences of discrimination and mistreatment in child welfare due to SOGI are all critical priorities to help reduce harm to children and improve their outcomes. Knowledge of an individual youth's SOGI also increases the likelihood of their placement in an LGBTQI+ supportive environment. A better understanding of the number of LGBTQI+ youth served by an agency can emphasize the need for effective LGBTQI+ specific training and service provision, and the necessity of support for foster parents and caregivers.

Similarly, collecting information about the SOGI of current and prospective foster and adoptive parents can help agencies identify potentially affirming families. This data is critical to demonstrate the harmful impact of policies that exclude or disqualify LGBTQI+ families in areas facing chronic shortages of family-based placement resources. Without any mechanism for collecting and tracking this information, agencies rely on ad hoc, informal networks to identify parents best situated to affirm LGBTQI+ youth.

II. Informing Data Collections

2.1 Are there data collections that would be uniquely valuable in improving the Federal Government's ability to make data-informed decisions that advance equity for the LGBTQI+ community?

One of the data sets most vital to understanding and improving outcomes for LGBTQI+ youth and families in child welfare is the Adoption and Foster Care Analysis and Reporting System (AFCARS).⁹

⁹ The 2016 AFCARS Rule took an important step towards one day having nationwide SOGI data by requiring state child welfare agencies to collect sexual orientation information for youth 14 and over, and for foster and adoptive parents and guardians. Adoption and Foster Care Analysis and Reporting System, 81 Fed. Reg. 90,524 (Dec. 14, 2016), available at: <https://www.federalregister.gov/d/2016-29366>. Also, agencies were required to capture whether conflict at the time of removal was related to the child's sexual orientation, gender identity, or gender expression. Unfortunately, in 2020, the Department of Health and Human Services (HHS) and the Administration for Children and Families (ACF), published a new rule stripping the requirement to report sexual orientation information. Adoption and Foster Care Analysis and Reporting System, 85 Fed. Reg. 28,410 (May 12, 2020), available at: <https://www.federalregister.gov/d/2020-09817>. The 2020 Rule is subject to a legal challenge. *California Tribal Families Coalition v. Azar*, No. 3:20-cv-06018-MMC (N. D. Cal. 2021), available at: <https://www.lambdalegal.org/in-court/cases/california-tribal-families-coalition-v-azar>. In the context of that challenge HHS and ACF stated they intend to promulgate a new rule to reinstate sexual orientation data elements, but they have yet to do so. A new rule should also include a requirement for gender identity data elements for youth, parents (families of origin), and foster and adoptive parents and guardians.

AFCARS data, which states are required to collect pursuant to the Social Security Act, has allowed researchers to see widespread trends, as well as to formulate more specific research study options and targeted interventions. The following list includes possible data points and collection opportunities which would be useful in meeting the goals identified above.

- Collect youth SOGI data at different points throughout the child welfare process (e.g. youth may not be comfortable sharing or be aware of their identity at the inception of the dependency case, their identity may be developing, or they may have fluid identities);
- Identify the number of youth who re-enter the system post-reunification, post-adoption/guardianship, or post-emancipation for reasons related to SOGI identification;
- Identify the experiences of LGBTQI+ youth in kinship care, foster care, group home or other institutions and existing training models for family-based and institutional caregivers in meeting the needs of LGBTQI+ youth to determine their effectiveness in improving outcomes;
- Identify other factors that may improve experiences or outcomes for youth, such as the child being independently represented by an attorney or guardian ad litem, the child's participation in court and ability to speak directly to the Court about their experience and desired outcomes;
- Identify and link other factors youth may have experienced with SOGI identification - homelessness, substance abuse, pregnancy, sexual assault, trafficking, criminal justice involvement, psychiatric hospitalization;
- Identify existing education, training, informed consent, and healthcare decision-making practices with respect to intersex infants and children and transgender youth and young adults; and
- Identify SOGI of individuals who foster and adopt, the duration from the initial contact with a foster care agency through other important points in time (licensure, placement first child or sibling group, and adoption when applicable), status of laws in state at time of involvement (e.g. license-to-discriminate laws), and individuals' perceptions of their experiences with the agency staff, youth, families, and the court.

In its January 2017 report¹⁰, the Federal Advisory Committee on Juvenile Justice, LGBT Subcommittee made data collection and research-specific recommendations to the Office of Justice Programs and the Office of Juvenile Justice and Delinquency Prevention. It described data collection as essential to better understand the needs of LGBTQI+ youth in the juvenile justice system. The recommendations include issuing guidance to stakeholders regarding the importance of data collection, providing funding to state and local jurisdictions to expand data collection to include SOGI, fund research and disseminate data to develop a thorough data-driven collection process across the field, including developing a comprehensive practice guide for how to collect SOGIE data, and support the creation of a national LGBT Data Committee to establish best practices for collecting SOGI data nationwide.¹¹

III. **Privacy, Security, and Civil Rights**

3.1 What specific privacy and confidentiality considerations should the Subcommittee on SOGI Data keep in mind when determining promising practices for the collection of this data and restrictions on its use or transfer, especially in the context of government forms and other collections of data for programmatic use?

Child welfare agencies already collect, record, and manage sensitive information related to children, parents, and kin, rendering agency staff well-equipped to collect SOGI information. Child welfare work

¹⁰ Federal Advisory Committee on Juvenile Justice, Recommendations of the LGBT Subcommittee -Advancing the Reform Process for LGBTQ/GNCT Youth in the Juvenile Justice System, (January 12, 2017), available at:

<https://facjj.ojp.gov/sites/g/files/xvckuh291/files/media/document/lgbt-recommendations-final-facjj.pdf>

¹¹ *Id.*

requires case workers to talk with children and their families about a range of sensitive, private matters and, with training, they are equally equipped to collect SOGI data. Our specific recommendations are to:

- Collect voluntary data from youth 14 and older using specially trained social workers to appropriately collect the data and ensure the youth and/or family understand the voluntary nature of data collection, the importance and intended use of the data, and the confidentiality protocols;¹²
- Include in all data collection materials a description on the importance of the data collection and the privacy standards by which the information is collected and maintained. The materials should be written in plain and culturally appropriate language, and be in accessible formats to individuals with disabilities; and
- Design a follow-up process to offer support and resources to youth upon completion of the survey, interview, or assessment. Youth should be provided with information on how to file a grievance if they believe there has been any breach of confidentiality.

3.2 Unique risks may exist when collecting SOGI data in the context of both surveys and administrative forms. Please tell us about specific risks Federal agencies should think about when considering whether to collect these data in surveys or administrative contexts.

The most significant concerns with SOGI specific data collection in child welfare is that SOGI information could be used to “out” youth or target youth and families resulting in greater harm. Additionally, the data could be corrupted or improperly collected and stored by anti-LGBTQI+ staff, administrators, or state governments. Clear nondiscrimination provisions within federal government programs, including for all HHS programs or those administered through Office of Justice Program grants, paired with prompt enforcement would help alleviate these concerns as would guidance to states about the expectations for privacy and appropriate use of the data.

Conclusion

The limited data and research currently available are inadequate to fully understand the experiences and address the needs of LGBTQI+ youth and families in child welfare. However, it clearly reveals the need for nationwide SOGI data collection as a necessary precursor to the broad reforms that will be necessary to improve experiences and outcomes for system-involved youth and families. Creating infrastructure and policies to support the collection and analysis of both child and family specific SOGI information is critical to achieving the child welfare system’s mandate: to protect the safety, permanency, and well-being of all children. For more information on the experiences of LGBTQI+ children, youth, and families in child welfare, please review the supplementary materials which helped to inform this response.¹³ We look forward to continuing the conversation, and to providing additional assistance to ensure our LGBTQI+ youth and families involved in the child welfare system are not left behind.

¹² For detailed examples on how best to protect confidentiality in the context of child welfare SOGI data collection see, Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), available at: <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>.

¹³ Brief for Family Equality and National Center for Lesbian Rights as Amicus Curiae, *California Tribal Families Coalition, et al., v. Xavier Becerra*, 3:20-CV-6018-MMC, available at https://www.familyequality.org/wp-content/uploads/2021/07/FE_Becerra_2021.06.2987-Amicus-Brief-filed603816538.1.pdf?_ga=2.216182160.760595274.1653323629-1215702128.1645641717&_gac=1.49215828.1649784290.Cj0KCOjwxtSSBhDYARIsAEn0thRMfseKXdhUmU3YCo2ToY3uxrvDVBSm2fMUoU0PAdKr8eb32uTPqAaAipiEALw_wcB; Comment by the Every Child Deserves a Family Campaign, *Request for Information: Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government* (May 5, 2021) [86 FR 24029] available at, <https://www.regulations.gov/comment/OMB-2021-0005-0108>; Every Child Deserves a Family Campaign Recommendations for the US Department of Health and Human Services, *Achieving Equity for LGBTQI+2S People and Other Marginalized Groups in Child Welfare* (March 2022) available at <https://everychilddeservesafamily.com/transition-recommendations>.

Sincerely,



Shelbi Day
Chief Policy Officer
Family Equality



Currey Cook
Senior Counsel and Youth in Out-of-Home Care
Project Director
Lambda Legal



Julianna S. Gonen
Federal Policy Director
National Center for Lesbian Rights