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## Santa Clara County's Juvenile Hall Transgender Policy: A First Look

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Santa Clara County's Juvenile Hall Transgender Policy: A First Look

A Thesis Quality Research Project Submitted in Fulfillment of the Requirements  
for the Masters of Public Administration

San José State University

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## **Introduction**

Beginning in the late twentieth century, acceptance of multiple forms of gender expression developed in American culture, including lesbian, gay, bisexual and transgender (LGBT). As the LGBT community continues to receive support for their social equality, and groups continue to advocate for them, changes have been taking place in various settings for LGBT individuals. Some areas that have seen changes include jails and juvenile detention facilities. Santa Clara County's Juvenile Hall is one of the institutions that now has a "Transgender Policy" in place for the purpose of ensuring appropriate housing and services for transgender youth who are admitted into juvenile hall.

As transgender policies begin to be implemented in places such as jails and juvenile detention facilities, it is important to examine the process and ensure that the staff is adequately trained in, and informed of, the detention facility's transgender policy. A literature review was compiled for this study including issues of transgenering among youth, issues of the transgender population in the justice and institutional system, and the legislative history of LGBT rights, including significant court cases.

This study is an examination of the Santa Clara County Juvenile Hall's Transgender Policy. This study is based on a survey of the Juvenile Hall Group Counselors, who work with the youth on a daily basis. The goal in involving the Juvenile Hall Group Counselors is to identify their level of knowledge regarding the Transgender Policy, and their attitudes toward its implementation. New policies can only be effective when all staff members affected by the policy are made aware of it. Further evaluation is

based on surveys of the Mental Health staff members who work directly with the transgender youth in custody during the assessment portion of the process. The goal in this part of the research is to fully understand the assessment process and the information that is used to assess the transgender youth, as well as to understand the importance of this policy from the mental health perspective.

Through professional research into the unique needs of the LGBT community, a literature has developed that addresses the unique personal, psychological and social needs of this community, and can be used to evaluate the transgender policy. Although little such research was previously available about the LGBT community, information regarding this population is increasing and is providing insight into how to address their needs in various settings. According to Kates (2008), New York has also placed a new transgender policy in their juvenile detention centers as a result of a lawsuit by a fifteen-year-old who was born a male, but identified as a female. She sued after the Office of Children and Family Services took away her feminizing hormones and refused to call her by her chosen female name. Kates reports that Hawaii and California are among the handful of states that are taking steps to provide specific civil rights protection to LGBT youth in foster care and in the juvenile justice system. It is clear that transgender youth are a part of the LGBT community that is in need of continued support.

According to the 1999 Massachusetts State Youth Risk Behavior Survey of high school students, LGBT youth are more likely to report having been injured or threatened at school with a weapon (Feinstein, Gereenblatt, Hass, Kohn, & Rana, 2001, p.12). LGBT youth face other issues that can lead them to become homeless. Between 25 percent and 40 percent of homeless youth are thought to be LGBT (Feinstein et al. 2006,

p.18) and become homeless due to the lack of support at home and possible rejection. It has been reported that homeless youth are more likely to enter the juvenile justice system than youth that are not homeless (Kaufman and Widom, 1999, p.348). Given that LGBT youth have a high potential of becoming involved in the juvenile justice system due to the likelihood of becoming homeless, it is important to adequately provide services to this minority population in the juvenile justice setting. As transgender youth form a part of the LGBT community, by examining the Transgender Policy currently in place in the Santa Clara County Juvenile Hall, it is hoped to gain a better understanding of what is being done to best serve LGBT youth in general in Santa Clara County, to provide feedback to ensure that the policy is being followed appropriately, and determine if the Juvenile Hall staff are well informed about the policy.

## **Literature Review**

### ***Issues of Transgendering among Youth***

Historically there is a scarcity of research on gay, lesbian and bisexual youth (Curtin, 2002, p.286). However, as of the early 2000's, the research on gay, lesbian, bisexual, and now transgender (LGBT) youth began to grow, which enables adults in custodial relationships with them to better address their needs. To begin, what is transgender? Grossman and D'Augelli (2006) provide a definition of transgender as defined by Ryan and Futterman (1998) as a "term used to describe individuals who exhibit gender-non-conforming identities and behaviors, or in other words, those who transcend typical gender paradigm" (p. 112). Another term referring to transgender youth is gender variant, meaning that their gender varies from that of their birth gender (Mallon and DeCrescenzo, 2006). When referring to the LGBT community, there are many terms

that are used. Of those terms, the transgender identity umbrella includes categories, which sometimes overlap. These categories include, transsexual; transvestite or cross-dresser; genderqueer; androgynous; and bi-gender. Many times, transgender and transsexual are used interchangeably, but it is important to identify the differences. Transgender refers to people whose gender identity differs from the social expectations for the physical sex with which they were born. Transsexual refers to people who experience a mismatch of the sex they were born as and the sex with which they identify. Many transsexual people desire to have sexual reassignment surgery (SRS), but not all (Definition of Terms, U.C Berkeley Gender Equity Resource Center). In addition, not all transgender people desire to have SRS, plus many cannot afford to have SRS. The overlapping affect is present in these two terms; however, for the purpose of this investigation, the focus will be the term transgender as part of the term LGBT. A list of additional terms can be found in Appendix A. Given the lack of research specific to the transgender population, much information refers to the similar issues found among the LGBT community in general.

Of the research that has been conducted about the transgender community specifically, some key issues that have been identified to affect transgender youth are psychological issues, family issues, educational setting issues and lack of support, which in turn can lead to risky behavior.

### *Psychological Issues*

Some psychological issues that affect transgender youth are depression and suicidal ideation (Toomey, Ryan, Diaz, Card and Russell, 2010). In 2000, Grossman and D'Augelli conducted a study using three focus groups of eight youth ages 15-21 that

identify as transgender, to investigate the different factors that affect transgender youth. One finding of that study is that some youth consider themselves as having high risk for self-harm because of their religious backgrounds and the pressure from their families and communities to conform. Transgender youth are constantly fighting feelings of shame and unworthiness due to their experience of rejection from their parents, peers, teachers and communities (Grossman and D'Augelli, 2006), which results in depression. As part of the LGBT community, transgender youth have similar issues to LGB minors. According to the Equity Project (2009), LGBT youth are 5.9 times more likely to report high levels of depression. Moreover, it is reported that LGBT youth are two to three times more likely to attempt suicide compared with other youth, and make up 30 percent of all completed suicides in the United States (Feinstein et al., 2001).

### *Family Issues*

For transgender youth the process of “coming out” (disclosing their gender identity), is a challenge for everyone involved, including their families, so many transgender youth choose to express their non-conforming gender behavior in secret and continue to do so as adults, in essence never really “coming out” (Mallon and DeCrescenzo, 2006). Although some youth do disclose their gender identity to their families, most keep their gender identity a secret until they can no longer hold it in anymore, and then revealing their identity takes parents by surprise. This places the parents in a difficult position where they must not only deal with the surprise but also multiple emotions. These emotions include the feeling of shock from the news, denial of the situation, grief, anger, misplaced guilt and shame, as well as real concerns such as the safety and health of their child, and concerns about the child’s future (Mallon and

DeCrescenzo, 2006). Parents are now faced with new worries such as the potential for surgery, issues in their place of employment and future love relationships. Other difficulties encountered by the family are as simple as having to change the pronoun used to address the transgender youth. Mallon and DeCrescenzo (2006) report some youth may try to be “cured” by their parents through punishment or even violence, or they are identified as the problem in the family and are blamed for everything that goes wrong, although in reality there is nothing to be cured. Other youth are sent away to behavioral camps, psychiatric hospitals or treatment facilities. Some transgender youth who disclose their identity are often “scorned, attacked, and locked into or thrown out of their homes.” (Lombardi, Wilchins, Esq. & Malfour, 2002, p.98). Overall, the reactions that a transgender youth will receive upon disclosing his or her gender identity range from loving acceptance to complete rejection. These reactions will greatly affect the future of the transgender youth.

#### *Educational Setting Issues*

Transgender youth are also concerned about the issues surrounding the educational setting. Victimization of transgender youth in the educational setting is an ongoing problem that is all too common. This victimization ranges from the use of gender identity related terms in a derogatory way to verbal harassment and even physical violence (Toomey et al., 2010). According to the Gay, Lesbian and Straight Education Network’s (GLSEN) 2008 report on school climate, 85 percent of LGBT students reported verbal harassment due to their gender identity or sexual orientation, 49 percent reported that they were physically harassed based on their gender identity or sexual orientation, and 34 percent reported experiencing a physical assault (Toomey et al.,

2010), all of which affect transgender youth as they form part of the LGBT students that participated in the study. Mallon and DeCrescenzo (2006) reported that it is common for school officials to perceive transgender youth to be youth that need to be monitored closely because they are perceived as troublemakers. In addition, aside from bullying and harassment, another issue that takes place in the educational setting for transgender youth is the notion of “correcting” the non-conforming gender behavior. As such, boys are moved towards the “sports corrective,” being enrolled in sports to correct their feminine mannerisms, and girls are moved towards the “etiquette corrective” in an attempt to turn the “tomboy” into a “lady” (Mallon and DeCrescenzo, 2006). Bullying and harassment is an ongoing issue for youth in general, unfortunately it is shown that transgender youth are a more vulnerable population to harassment in the educational setting.

### *Lack of Support*

Overall there appears to be a lack of resources for transgender youth. Aside from the lack of support some transgender youth experience in their homes, they are also faced with a lack of support in the educational setting, as well as the field of health care. In Grossman and D’Augelli’s (2006) study of factors that affect the experiences of transgender youth, the transgender youth in the study reported a lack of access to health care services for counseling, for testing for sexually transmitted diseases, as well as a fear of discrimination from health care providers. Furthermore, there are still very few gender-specialized services available in the mental health field (Mallon and DeCrescenzo, 2006). It is when transgender youth experience a lack of support at home

that they need to be able to have access to resources that will help prevent them from engaging in risky behavior.

### ***Transgender Population in the Justice and Institutional Systems***

Lack of adequate personal support from external sources can lead the transgender youth to engage in risky behavior. As mentioned above, transgender youth can receive reactions ranging from loving acceptance to complete rejection upon revealing their gender identity. When the youth are completely rejected, they may run away from home because of the painful rejection and many are forced out of the home (Mallon and DeCrescenzo, 2006). Once the youth are on the street they are at risk of becoming involved in delinquent behavior in order to make money, turning to substance abuse, or becoming victimized on the streets. It is estimated that more than 40 percent of homeless youth identify as LGBT, and homeless youth in general are at a greater risk of becoming involved in delinquent behavior and getting arrested (Feinstein et al., 2001). Crimes for which transgender youth are more commonly arrested are robbery or prostitution, in order to survive on the streets (Feinstein et al., 2001). Marksamer (2008) explains that experiences leading to the overrepresentation of transgender youth in the juvenile justice system are family rejection, harassment in prior placements, harassment in school, isolation, low self-esteem and depression, and a lack of understanding. These experiences lead to runaway youth, poor school attendance, and substance abuse. It is reported that LGBT youth are 3.4 times more likely to use illegal drugs (Majd, Marksamer, and Reyes, 2009).

While in custody, transgender youth are entitled to basic legal rights. Estrada and Marksamer (2006) lay out the constitutional rights any youth, including a transgender

youth, has while in custody. These include the youth's right to safety in juvenile detention and correctional facilities. Due to the rehabilitative nature of juvenile detention facilities, the constitutional rights of juveniles in detention are broader than the constitutional rights for adults in detention. Juveniles in detention also have the right to safe conditions of confinement. Under this right, juvenile detention facilities must have a reliable classification system to provide safety for all youth, including transgender youth, who are a vulnerable population and are at risk of being harassed in the detention setting. A detention facility needs to take into consideration various factors when determining the youth's level of confinement, such as age, size, offense history and sexual orientation. In general, the youth will be classified at intake. Facility staff members who make classification decisions must have an understanding of the safety risks a transgender youth faces while in custody, and should take those risks into account when classifying a transgender youth (Estrada & Marksamer, 2006). However, transgender youth should not be isolated because of their gender identity. Marksamer (2011) highlights some problems in group care facilities that work with transgender youth and offers some solutions. The top three problems include lack of respect and support for the youth's gender identity and expression; gender inappropriate placements; and verbal harassment, threats, violence and isolation. Marksamer's solution for the first problem is to acknowledge and support the transgender youth by using his or her preferred name and pronoun, and allowing them to express themselves through their hairstyles and clothing. To address the second problem, Marksamer (2011), claims that an individualized classification assessment is necessary in order to ensure the emotional and physical safety of a transgender youth. Finally, for the third problem highlighted, Marksamer suggests to provide an appropriate

and prompt response to harassment, provide diversity training for the facility staff, and establish policies and procedures that will provide a supportive environment for transgender and non-conforming youth.

Another unique challenge for all LGBT youth in custody is that they may be treated as sex offenders solely because of their gender identity; however, doing so is a violation of their constitutional rights (Estrada and Marksamer, 2006). Therefore, unless a youth has been adjudicated with a sex offense, the youth should not be labeled a sex offender. Furthermore, specifically transgender youth in custody also have the constitutional right to freedom of speech and expression and the right to equal protection (Estrada & Marksamer, 2006).

In addition to the constitutional rights, transgender youth in custody may also have additional state laws and statutes that further protect them. The state of California, for example, enacted the Foster Care Nondiscrimination Act that protects youth in the welfare system on a variety of bases, including perceived sex, gender identity, sexual orientation and HIV (Human Immunodeficiency Virus) status under the Welfare and Institutions Code. Now, the County of Santa Clara has developed its own Transgender Policy for use in Juvenile Hall, as examined in this study, in response to developing best practices in youth corrections.

Moreover, certain agencies, such as the Los Angeles Police Department and Cook County Jail, have also now adopted policies that aim to protect the transgender population. In the city of Los Angeles, the city jail holds inmates for up to three days, until they appear in Court for arraignment. After that, they are transferred to Los Angeles County Jail. According to the Los Angeles Times (Quinones, 2012) in an effort to

protect transgender detainees, the city of Los Angeles announced in April of 2012, that a new module would be opened in their women's facility specifically to house transgender detainees until they appear in Court for arraignment. Although this new policy did not affect Los Angeles County Jail, it is a start at the city level.

Cook County Jail, in the state of Illinois, has also established a new policy to address the needs of transgender detainees (Lu, 2011). The new policy covers procedures for items such as medical care, housing, clothing and showering, among others (Lu, 2011). Just as the adult facilities are beginning to address the needs of the transgender population, the youth facilities are following the trend, including New York as previously mentioned, and Santa Clara County, the focus of this research, in that they are acknowledging the presence and need of the transgender population within their respective facilities by creating policies that acknowledge the special needs of these detainees.

Other issues identified regarding the juvenile justice system and LGBT youth, as described by Feinstein, et al. (2001), include a lack of awareness about their existence and their needs, a lack of appropriate sentencing options that best serve the youth, the safety of LGBT youth in custody, a lack of training and expertise for professionals within the justice system on how to meet LGBT youth's needs, a lack of specific policies pertaining to the management of LGBT youth within the justice system, and a lack of services and resources that meet the needs of LGBT youth. According to a recent study of juvenile detention facilities in Portland, Oregon; Albuquerque, New Mexico; Minneapolis, Minnesota; Santa Cruz, California; Las Vegas, Nevada and Birmingham, Alabama, at least 13 percent of youth in juvenile detention facilities are LGBT (Majd,

Marksamer, and Reyes, 2009). Therefore, it is important for the awareness of the unique needs of LGBT youth to increase. While in custody, according to Estrada and Markasmer (2006), it is the detention facility's job to ensure that all youth are safe and treated with respect.

Overall, it appears that little is known about transgender youth in the justice system, and new policies are slowly beginning to address the needs of this population. Nonetheless, more work is needed to help transgender youth in the juvenile justice system, including the development of programs to address their needs and policies within the detention facilities to be able to provide a safe environment for all LGBT youth in custody overall.

### ***Legislative History of Transgender Policies***

The gay rights movement was just one of the many social justice movements that began in the 1960s. The modern gay rights movement in the United States is said to have begun with the Stonewall Riots of 1969, which took place in New York as a result of a police raid on an illegal gay bar (The Leadership Conference, 2009). Although homosexuality had been considered a mental illness, in 1973 the Diagnostic and Statistical Manual, Third Edition (DSM-III), a resource used by mental health to categorize patients, removed homosexuality from its list of mental illnesses. (Spitzer, 1981) By the late 1970s gay activists had gained the support of several dozen communities and some states in creating policies that prohibited discrimination based on sexual orientation in housing, employment and in other establishments (Wald, Button, and Rienzo, 1996). However, the level of street violence and police violence against gays continued to escalate. This change in status, along with the assassination of the most prominent gay public official,

Harvey Milk, who served on the Board of Supervisors in San Francisco, contributed to the passage of expanded civil rights legislation in 44 additional cities and counties in the 1980s (Wald et al., 1996).

In 1993, the Defense Department, under President Clinton's orders, changed the ban on homosexuals in the military to the ban of homosexual activity. The policy became known as the "Don't ask don't tell." This policy was presented as a way to allow gays to serve in the military without fear of discharge as long as they did not reveal their sexual orientation. This also stopped the military from hunting for gays in the military. In 1996 in *Romer v. Evans (1996)*, in the state of Colorado, the Supreme Court ruled that discrimination on the basis of sexual orientation falls under the Equal Protection Clause of the Fourteenth Amendment (Leonard, 2003). After *Romer v. Evans*, the number of states banning discrimination based on sexual orientation increased. During this time at the federal level, the heads of all the executive branch departments issued executive orders banning discrimination based on sexual orientation among civilian federal employment (Leonard, 2003).

Another significant case involving the LGBT community is the case of *Lawrence v. Texas (2003)*. On September 17, 1998, the Houston Sheriff's Department was called warning that a black man was "going crazy with a gun" in an apartment (Lithwick, 2012, p.76). The deputies who arrived on the scene stormed into the apartment and found no gun, but instead arrested John Geddes Lawrence and Tyron Garner for having sex in Lawrence's bedroom. When the police entered the apartment they found sexually explicit art on the walls, and Lawrence and Garner were arrested for "deviate sexual intercourse, namely anal sex, with a member of the same sex (man)" (Lithwick, 2012,

p.77). However, although Lawrence and Garner were arrested for “deviate sexual intercourse,” it was noted that out of the four police officers who entered the room the night of the arrest, two reported seeing two men having sex, one officer reported seeing anal sex, and the last officer reported seeing oral sex (Lithwick, 2012, p. 78).

Nonetheless, it is reported that the interviews with Garner and Lawrence during the investigation of the case determined that they were not having sex, and were fully clothed (Lithwick, 2012). Ultimately, these two men were sought to be the perfect plaintiffs for what turned out to be a Civil Rights case. The case that represented the right of gay couples to have consensual sex in their private settings involved two men, who were neither a couple nor having sex; however, the case challenged the anti-sodomy laws of the state of Texas. In 2003, the United States Supreme Court in the case of *Lawrence v. Texas*, ruled by a six-to-three margin that anti sodomy laws were unconstitutional (Lithwick, 2012).

The newest issue related to LGBT rights is same sex marriages. The most recent Supreme Court case is over California’s Proposition 8, which is a measure that added a new provision to the Declaration of Rights of the California Constitution that bans marriages between people of the same sex. Proposition 8 was passed in the November 2008 election, with 52 percent of voters supporting the proposition and 48 percent of voters opposing the proposition (Khan, 2009). Currently, the proposition is being challenged in the California Supreme Court and the Ninth Circuit Court. On March 26, 2013, the oral arguments were heard on the matter. The Supreme Court appeared to be split after the hearing, and the ruling will be handed down in June 2013. (Parnass, 2013)

In addition to the issues of same sex marriage, the LGBT community has also struggled with discrimination in the work place. Section 200e-2(a) of Title VII of the Civil Rights Act of 1964 indicates “It shall be an unlawful employment practice for employers to to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin” (Civil Rights Act of 1964). Historically, gay and lesbian employees who have been discriminated against in the work place have attempted to bring Title VII claims based on the theory that discrimination based on sexual orientation is *per se* “sex discrimination” (Turner, 2007). However, these claims were and continue to be denied.

Similarly, early claims made by transgender plaintiffs were also regularly denied until *Price Waterhouse v. Hopkins* (1989). Although the plaintiff in *Price Waterhouse v. Hopkins* was not transgender, a female employee was denied a promotion because of her unfeminine appearance and behavior (Turner, 2007). In this case, Ann Hopkins was a very successful senior manager at Price Waterhouse accounting firm. She had worked for the firm for five years when she became a candidate for partnership with the company due to her excellent contributions. She was the only woman among eighty-eight candidates for partnership. Twenty of the candidates, including Hopkins, were not accepted that year and were held for reconsideration for the following year. The reasons for holding Hopkins for reconsideration included that the existing partners perceived Hopkins as “macho,” overcompensating for being a woman, and needing “a course at charm school.” (Turner, 2007, p.575). In addition, the person who provided Hopkins

with the reasons for denying her partnership also provided her with the advise to “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry” (Turner, 2007, p.575). The Court held that “an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender” (Turner, 2007, p.575). This was the first time the Supreme Court gave its support to a theory of sex discrimination, including, “discrimination based an individual’s perceived failure to conform to gender stereotypes” (Turner, 2007, p.576).

*Schwenk v. Hartford (2000)* was the first case after *Price Waterhouse v. Hopkins* that involved a transgender plaintiff. In this case, a male-to-female transsexual prisoner was sexually assaulted by a prison guard and she sued under the Gender Motivated Violence Act (GMVA). The Ninth Circuit Court of Appeals found that legislative history shows there is clear intent in the law that its protections would apply equally to men and women (Turner, 2007). Additionally, because the GMVA parallels the protections under Title VII, the Court found that Schwenk constituted a valid claim under the GMVA (Turner, 2007).

Another similar case is *Rosa v. Park West Bank & Trust (2000)*, in which a transgender woman went into Park West Bank wearing a blouse and stockings and requested a loan application. The Park West Bank employee requested identification and Rosa provided three pieces of identification, but one of the photo identifications depicted Rosa as a male dressed in traditional masculine clothes. The employee refused to provide Rosa with a loan application until she returned wearing men’s clothing (Turner, 2007). Rosa filed a claim under the Equal Credit Opportunity Act (ECOA). Initially, the Court

found that no discrimination had occurred under Title VII because Rosa was discriminated against due to her style of dress, which under Title VII is not a protected category. However, the First Circuit Court of Appeals reversed the case, indicating that Rosa had a valid claim under *Price Waterhouse* (Turner, 2007).

In 2004, in the case of *Smith v. City of Salem*, the Sixth Circuit Court of Appeals became the first federal circuit court after *Price Waterhouse* to be confronted with the question of whether a transgender plaintiff can bring a claim of sex discrimination under Title VII based on the gender-stereotyping theory (Turner, 2007). Turner describes the gender-stereotyping theory as discrimination against someone based on his or her “non-conformity with gender stereotypes” (Turner, 2007, p.562). In *Smith v. City of Salem*, Jimmie Smith was born a biological male and worked as a lieutenant fire fighter for the Ohio Fire Department. Smith worked for seven years with the Ohio Fire Department without any issues until she was diagnosed with Gender Identity Disorder (GID). After being diagnosed, Smith dressed and acted more femininely while at work, as suggested as part of her treatment for GID. Her co-workers began to make comments about her appearance. Smith contacted her immediate supervisor about her treatment and her future plans to undergo sex-reassignment surgery. The Ohio Fire Department had discussed terminating Smith’s employment, and she immediately contacted the EEOC. Eventually, Smith was suspended for twenty-four hours for violating a policy. After a hearing, her suspension was upheld and Smith brought the suit to the federal district court. On appeal, the Sixth Circuit Court reversed the decision based on *Price Waterhouse*, which supported that Title VII’s protection against discrimination based on “sex” also prohibits discrimination based on gender.

With the noted cases above involving transgender and gender-nonconforming plaintiffs, it appears that legally, the Courts are slowly moving forward to provide further protection to LGBT individuals. Furthermore, according to the Transgender Law & Policy Institute, there are seventeen United States (U.S) jurisdictions prohibiting discrimination, specifically in public employment, on the basis of gender identity and expression; including, the city of San José and Alameda County in California. In addition, there are over 90 U.S jurisdictions with some kind of law prohibiting discrimination on the basis of gender identity or expression since 2000.

As the protection increases for the LGBT community in areas such as employment, and laws continue to be enacted, the protection will extend to the LGBT community in other aspects, including detention facilities. For example, in Philadelphia, a settlement was reached in a case known as *L.P. v. City of Philadelphia*, a legal complaint between a transgender youth and the City of Philadelphia's Department of Human Services and the Youth Study Center (YSC). The complaint was filed in 2009 after a transgender youth was verbally abused by staff and physically attacked by other youth (<http://www.lambdalegal.org>). The abuse occurred after a Family Court Judge ordered the youth to receive proper medical treatment, including hormone therapy, and for her female gender and name be respected. The result of that settlement includes revisions to YSC policies to include specific protections for transgender youth in their custody. Other such laws that include the protection of LGBT youth in California include the California Education Code §220 (2002), which protects students from "discrimination and hate violence on the basis of gender identity and disability." In all, what started out as gay rights against discrimination in housing and the work place in the

1960s has now evolved and continues to evolve with time to include and protect other gender non-conforming individuals in other settings.

### **Methodology**

This research design uses the process intervention methodology: problem identification, solution development, implementation and feedback evaluation. For phase one, the problem identified was the application of a transgender policy in Santa Clara County's Juvenile Hall. In phase two, the new Transgender Policy that the Santa Clara County Juvenile Hall has already developed was examined. In phase three, the implementation of the policy was observed. A managerial audit was conducted with Juvenile Hall's mental health staff to describe the actual process and how the Transgender Policy is being implemented. Finally, for phase four, another interactive managerial audit took place with Juvenile Hall's Group Counselors to assess their knowledge of the Transgender Policy.

The subjects who participated in this study are Santa Clara County's Juvenile Hall mental health staff and Juvenile Hall Group Counselors working in the living units (staff members that work directly with the youth who are in custody on a daily basis in their housing units). The subjects were sought at their place of employment, Juvenile Hall. They were contacted using electronic mail or telephone. They were provided with a consent form and a cover letter explaining their participation and the research. The Juvenile Hall mental health staff members who have worked with the Transgender Policy were recruited specifically based on their experience. Juvenile Hall Group Counselors were recruited randomly from the three different shifts (mornings, swing, and graveyard). The Juvenile Hall mental health staff included both male and female adults over twenty-

five years of age of Caucasian and Asian ethnicities, who have worked with the transgender youth in custody. A total of four Juvenile Hall mental health staff members out of fifteen participated in the research. A total of fifteen Juvenile Hall Group Counselors out of seventy-two, who work in the living units where the minors are housed, also participated. Both male and female Juvenile Hall Group Counselors, ages twenty-one to forty, of various ethnicities, including Hispanic, Caucasian, Asian, and African American, participated in the research. The interview process took approximately twenty to thirty minutes, and was documented in writing. In order to maintain confidentiality, all participants were assigned coded numbers. The participants were identified in the data and in the final project solely by their coded numbers. No participant was identified by his or her real name. All notes were scanned and were stored in a password-protected file on a computer belonging to the researcher. Once the notes were scanned and transferred to a password-protected file, the hard copy was shredded. All data will be destroyed one year after the study.

## **Findings**

### ***Phase I: Problem Identification***

For the first phase of this study, the problem identified is the need for a transgender policy in Santa Clara County's Juvenile Hall, as understood by the Juvenile Hall Group Counselors. A simple survey was used to determine the opinions of the Juvenile Hall Group Counselors asking, "Do you think there is a need for a transgender policy in the Santa Clara County Juvenile Hall? Why or why not?" Fifteen Juvenile Hall Group Counselors were surveyed. The ethnic demographics of the Juvenile Hall Group Counselors surveyed included nine of Hispanic ethnicity, two of Caucasian ethnicity, two

of Asian ethnicity, and two of African American ethnicity. Seven of the Juvenile Hall Group Counselors surveyed work the morning shift (7a.m-3p.m.), four work the swing shift (3 p.m.-11 p.m.) and three work the graveyard shift (11 p.m.-7 a.m.). Of the fifteen Juvenile Hall Group Counselors, seven males and eight females were surveyed. The survey can be found in Appendix B.

Table 1: Response of 15 Juvenile Group Counselors who were asked, “Do you think there is a need for a transgender policy in Santa Clara County Juvenile Hall?”

<b>Answers</b>	<b>Frequency</b>	<b>Percentage</b>
Yes	12	80%
No	3	20%
<b>Total</b>	<b>15</b>	<b>100%</b>

Of the fifteen Juvenile Hall Group Counselors surveyed, twelve said yes, there is a need for a transgender policy in Santa Clara County’s Juvenile Hall, and three said no. Of the three Counselors who responded no, JH-1, JH-5, and JH-7 said no because they had concerns for the safety of minors and staff. JH-5 reported that for the most part, males are still physically bigger than females, regardless of their gender identity, and if a physical fight were to occur, the transgender youth (if male to female) may still cause more physical harm to the female youth. JH-1 stated that if a minor is searched by a staff member of the opposite gender, the potential for accusations rises. Another reason documented for not needing a transgender policy in Juvenile Hall is there have not been any problems in the past, so “why fix something that isn’t broken” (JH-5). Finally, the last point made by JH-5 is that once juvenile inmates are allowed to choose where to be

housed or who searches them, the inmates may want to make more choices that can lead to more problems. These findings are displayed in Table 2 below.

Table 2: Reasons for not having a transgender policy

<b>Main reasons</b>	<b>Subjects</b>	<b>Frequency</b>	<b>Percent</b>
Safety concerns	JH1, JH5, JH7	3	100%
Too much freedom	JH5	1	33%
No previous problems	JH5	1	33%

\*Juvenile Group Counselors who answered no (Refer back to table 1)

The remaining twelve Juvenile Hall Group Counselors, who said yes, there is a need for a transgender policy in Juvenile Hall, provided several reasons. JH-3, JH-4, JH-9, and JH-12, stated that transgender youth are youth that deserve equal rights, form part of our community and should be served equally. JH-2, JH-6, and JH-11 stated that a transgender policy is needed for the emotional well being of the transgender youth. JH-4 stated that by providing a comfortable environment to the transgender youth, he or she will be able to focus on the real issues that are causing his or her delinquent behavior. Other reasons reported by the Juvenile Hall Group Counselors included the safety and security of the minors and staff (JH-6, JH-12, and JH-14). JH-10 presented the issue of public pressure as a reason that a transgender policy is necessary. JH-10, JH-13, and JH14 stated that a transgender policy is needed in order to be prepared to deal with the transgender population in an appropriate manner with specific procedures to follow. Finally, out of the twelve Juvenile Hall Group Counselors that said yes, a transgender policy is needed, three (JH-2, JH-8, and JH-13) believe that there should be a policy in place, but that policy should not allow the transgender youth to be housed in the unit

based on his or her gender identity or to those who search for them. These findings are displayed in Table 3 below.

Table 3: Reasons for having a transgender policy\*

<b>Main reasons</b>	<b>Subjects</b>	<b>Frequency</b>	<b>Percent</b>
Equal rights for TY**	JH3, JH4, JH9, JH12	4	33%
Emotional well being	JH2, JH6, JH11	3	25%
Provide comfortable environment	JH4,	1	.08%
Safety and security	JH6, JH12, JH14	3	25%
Public pressure	JH10	1	.08%
Be prepared to deal with TY population	JH10, JH13, JH14	3	25%
Be housed with biological gender	JH-2, JH-8, JH-13	3	25%

\*Juvenile Group Counselors who answered yes (Refer back to table 1)

\*\*TY-Transgender Youth

This indicates that the staff wants a policy and procedures on how to address issues for transgender youth, however, one quarter believe the transgender youth still needs to be housed in a unit based on his or her biological gender.

Overall, the majority of the Juvenile Hall Group Counselors surveyed believe there is a need for a transgender policy in Santa Clara County's Juvenile Hall, as indicated in Figure 1. In Phase I, the problem was identified and the findings supported that the Juvenile Hall Group Counselors do believe there is a need for a transgender policy in Santa Clara County's Juvenile Hall.

### ***Phase II: Solution Development***

In Phase II, the 2012 Transgender Policy currently in use was examined to determine if it meets the needs of the Juvenile Hall Group Counselors as identified in Phase I.

According to the Probation Department Juvenile Hall Procedures Manual, the Transgender Policy states, “The purpose of this policy is to establish operational practices that reinforce our commitment to respect the dignity of transgender and gender non-conforming youth, create a safe environment for all youth, and ensure that all youth have equal access to all available services, care and treatment” (Probation Department Juvenile Hall Procedures Manual, 2011, Part 6, p.1). The purpose of the Transgender Policy as it is written does meet two of the needs that were previously identified in the survey from Phase I of this study.

The Transgender Policy also states that, “Upon admission each youth who identifies as transgender will initially be housed according to their assigned biological sex pending an individualized assessment and multi-disciplinary team (MDT) meeting” (Probation Department Juvenile Hall Procedures Manual, 2011, Part 6, p.1). According to the policy the MDT meeting will determine what individual arrangements will be set in place in order to support the transgender youth’s emotional and physical well being. The MDT may include several participants, such as Juvenile Hall staff, Probation Officer, Mental Health staff, Medical Psychiatry, the transgender youth’s family (if appropriate) and any other relevant persons, such as advocates. The purpose of the MDT meeting is to determine or confirm if the youth should be classified as transgender, and what specific housing, programmatic, and treatment arrangements will best support the transgender youth. This part also supports some of the needs mentioned above as identified in the survey of Phase I of this study.

The final part of the Transgender Policy states that there is a Transgender Preference form that the transgender youth fills out upon completion of the MDT

meeting. For those who are deemed to be transgender youth, the form provides the place to select his or her preferred name, pronoun, housing preference and gender preference of the staff to perform a search or urine analysis. The Transgender Preference form is placed in the minor's file in the Police Admissions area of Juvenile Hall. Copies of the Transgender Preference form are then sent to the unit file (the assigned unit as determined based on the MDT meeting outcome), the unit Supervising Group Counselor, the youth's Probation Officer, the Boys and Girls Receiving units, which are the units that process the minors when they are admitted into Juvenile Hall, and the Living and Control Supervisor's offices. Based on the findings of the survey as conveyed in Phase I, this part of the policy appears to be the part that the Juvenile Hall Group Counselors are uneasy about. The Juvenile Hall Group Counselors that responded "no" to the survey stated that there are safety concerns for the youth if housed in a unit with the opposite gender, as well as concern for the staff when searching a youth of the opposite gender; however these are the options provided with the Transgender Preference Form. In addition, this part of the policy also concerned some of the Juvenile Hall Group Counselors who responded "yes" to the survey. As the findings in Phase I state, twenty-five percent of the Juvenile Hall Group Counselors believe there should be a policy in place to support transgender youth that are in custody; however, the policy should not allow the youth to choose the unit in which he or she is housed or the gender of the staff who searches him or her.

The purpose of the Transgender Policy as it stands does meet some of the needs that were found in the survey of Phase I; however, the findings of the survey also identified other needs that the transgender policy does not address as it is written.

### ***Phase III: Implementation***

In this phase of the study, the implementation of the policy was examined from the perspective of the mental health staff, who organizes the MDT meeting, which determines what specific treatment and programmatic arrangements will best support the transgender youth's physical and emotional well-being. This also includes housing arrangements. For this phase, four mental health staff members were interviewed using an interactive managerial audit interview format. The ethnic demographics of the mental health staff interviews include three of Caucasian ethnicity and one Asian ethnicity. Two female and two male mental health staff members were interviewed. The interview questions can be found in Appendix C.

The Juvenile Hall experience of the four mental health staff ranged from two and a half years to thirteen years. The total years of their experience in the mental health field ranged from ten years to twenty-three years. All four mental health staff reported having worked with transgender youth only while working in Juvenile Hall. All four mental health staff reported that the MDT meeting takes place at least within one week of the minor's admission to Juvenile Hall. MH-1 reported never taking part in an MDT for a transgender youth; therefore she did not know what kinds of questions were asked or what was looked for at the MDT evaluation. MH-2, MH-3, and MH-4 all have participated in MDT meetings in the past and stated that one thing the youth is asked about is his or her preferred name and pronoun. A discussion of possible accommodations also takes place in the MDT meeting.

MH-1 did not know what criteria the youth needs to meet in order for the transgender policy to apply. MH-2, MH-3, and MH-4 reported that the main criterion is

that the transgender youth has to have been previously diagnosed as having gender identity disorder according to the Diagnostic and Statistical Manual of Mental Disorders (4<sup>th</sup> ed., DSM-IV). MH-2 stated that if a previous diagnosis is available, that diagnosis is accepted; however, if a minor has never been diagnosed, Juvenile Hall mental health staff can conduct a psychological evaluation to determine if the minor meets the DSM-IV diagnosis. All four mental health staff indicated that the final decision made on the treatment plan is made as a team decision.

MH-1 did not know what a typical agenda for an MDT meeting looked like. MH-2 stated that a typical agenda includes a summary of the minor's history, a discussion of possible accommodations, a discussion with the minor regarding his or her gender identity and preferences, and finally, a consensus on a treatment plan. MH-3 also stated the same answer as MH-2, but added that Juvenile Hall management has a big influence on the final decision. MH-4 also added that the agenda also depends on the individual needs of the youth and that the main goal of the MDT meeting is to do what is in the best interest of the youth.

MH-1 and MH-3 stated that possible programmatic arrangements include being housed in a unit based on the juvenile's gender identity, being called by his or her preferred name and pronoun, and being searched by a preferred gender. MH-2 stated the same answer, but also stated that hormone therapy may also be a programmatic arrangement. All four mental health staff reported that the information on the programmatic arrangements are shared by unit supervisors with their staff and superiors, and that arrangements are documented in MDT meeting minutes, which are distributed among the parties present at the MDT meeting. The parties present in the MDT meeting

may include the minor's Probation Officer, housing unit supervisor, any advocates, and parents, only if it is believed that it is in the minor's best interest to have their parents present.

All four mental health staff indicated that hormone therapy may be considered a programmatic arrangement if the hormone therapy had already been started prior to the youth's incarceration. MH-2 stated that if hormone therapy is in place prior to incarceration, then it is "unlikely to be discontinued." MH-2 also stated that hormone therapy may also be initiated while the minor is in Juvenile Hall; however, it is a decision that is made by a psychiatrist and a physician, if appropriate. MH-2 mentioned the Transgender Preference form and stated that the form documents the minor's preference, which is kept in the Police Admissions area for record keeping if the minor is to return to Juvenile Hall. MH-1, MH-2, and MH-3 reported that the MDT process does not have to start over if the minor is released and comes back into custody. MH-2 stated "An MDT meeting can take place at any time if it is deemed necessary."

All four mental health staff members believe the transgender policy has been helpful for transgender youth in Juvenile Hall. MH-1 stated the policy makes the minors feel more comfortable in his or her gender identity. MH-2 stated the policy "provides a clearer practice to follow." MH-3 reported the policy acknowledges who the minors are without hiding or pretending they are someone else, despite the safety risks. MH-4 reported that the new policy helps "alleviate stress" for the transgender youth, who is already in a stressful situation while in custody. According to all four mental health staff interviewed, transgender youth are seen at least once a week unless other arrangements

are made between the youth and the mental health staff, similar to other juveniles in custody.

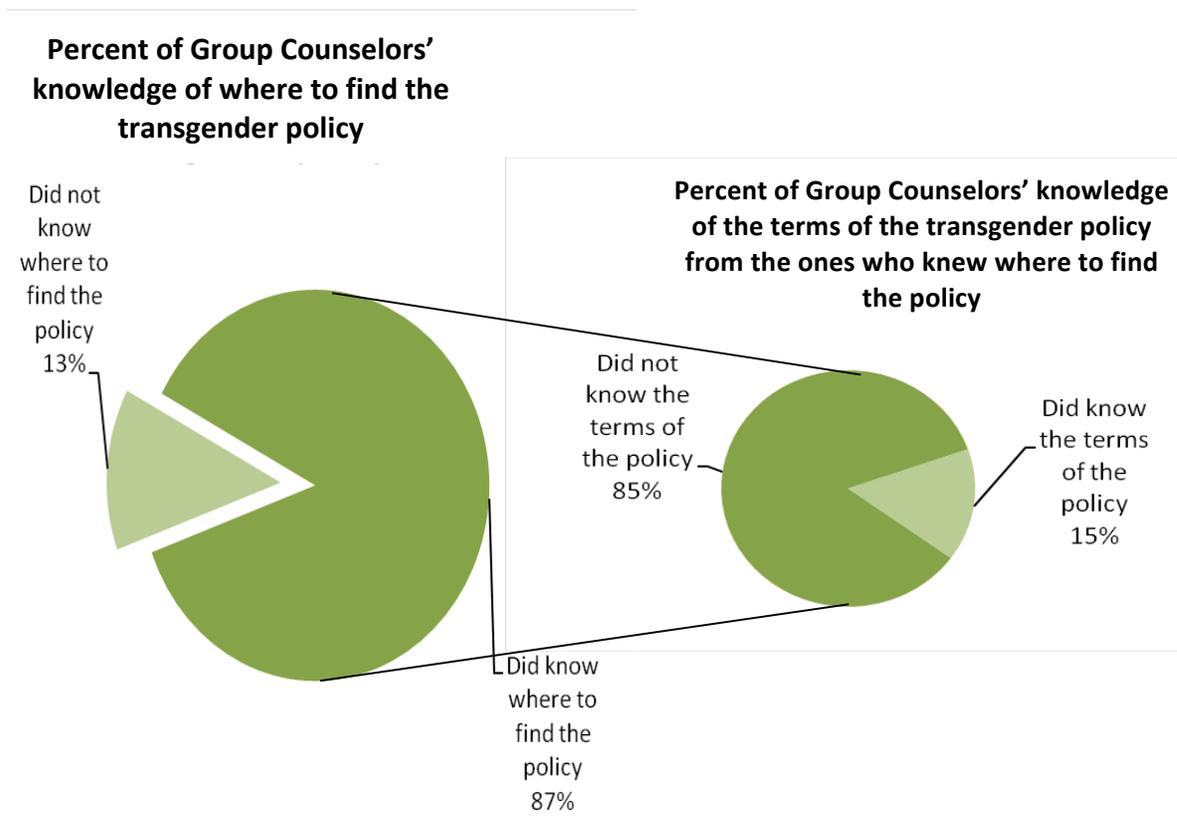
As of now, all four mental health staff reported that no changes are needed for the transgender policy. MH-1 stated that through the policy “transgender youth are heard and other youth build tolerance and acceptance.” MH-2 stated the policy works well so far, but believes it is still a “work in progress” and believes some changes will be made to the policy in order to improve it. MH-3 and MH-4 stated the only thing that is needed is more training for the Juvenile Hall staff to provide awareness of the transgender population. MH-4 stated some Juvenile Hall Group Counselors need more education on the transgender population in general, as he has observed some “ignorance” and “lack of acceptance.” Finally, MH-1, MH-3, and MH-4 reported that the policy will not result in more minors being willing to request an MDT assessment. MH-1 stated “it has to come from the minor.” MH-2 stated the policy will result in minors being more willing to request an MDT because the counselor has already seen it happen with two minors that were in custody at the same time.

#### ***Phase IV: Feedback Evaluation***

In the final phase of this study, a feedback evaluation of the Juvenile Hall Group Counselors was conducted with regards to their knowledge of the Transgender Policy. An interactive managerial audit interview format was used to compile the data. The Juvenile Hall Group Counselors that participated in the survey of Phase I are the same people who participated in the interactive managerial audit interview in this phase. The interview questions to this phase can be found in Appendix D.

The findings show that the years of Juvenile Hall experience among the fifteen Juvenile Hall Group Counselors interviewed ranged from two years to twenty-eight and a half years. The overall experience of working with youth ranged from four years to twenty-eight and a half years. Of the fifteen Juvenile Hall Group Counselors interviewed, ten stated that they have worked with transgender youth in the past, and five stated that they have not worked with transgender youth in the past. Thirteen of the Juvenile Hall Group Counselors reported knowing where to find the Transgender Policy; however, only two of the thirteen stated knowing the terms of the policy, as displayed in Figure 1.

Figure 1: Group Counselors’ Knowledge of the Transgender Policy



Specifically, five stated that they did not know what the policy consisted of and eight stated they have only a general idea of the terms of the policy, but reported not knowing the policy well enough. Nonetheless, eight Juvenile Hall Group Counselors reported that they knew what steps needed to be taken when a transgender youth is admitted into Juvenile Hall, despite not knowing the terms of the policy. Five stated that they did not know what steps needed to be taken when a transgender youth is admitted into Juvenile Hall, and two stated “somewhat.” Nine of the participants reported that they had worked with a minor for whom the Transgender Policy has applied, while six reported that they had not. Of the nine Juvenile Hall Group Counselors who had worked with a minor for whom the Transgender Policy applied, six reported that they had to make programmatic arrangements for the minor, and three reported they did not have to make any programmatic arrangements for the minor. All Juvenile Hall Group Counselors who made programmatic arrangements for the youth reported that the information was provided to them from their supervisors through Unit Meetings and via electronic mail.

It was found that eleven of the Juvenile Hall Group Counselors thought the Transgender Policy should be changed in some way, while four thought no changes were needed to the policy. JH-1, JH-5, and JH-7 reported that there should not be a policy in place at all. JH-4 stated there should be a change in the policy not allowing the transgender youth to choose the gender of the staff that searches them. JH-6 reported that there should be more training regarding the policy for all staff. Four of the Juvenile Hall Group Counselors reported the policy needs to be changed so that the transgender youth

is not allowed to be housed in a unit that is opposite to their biological gender (JH-7, JH-8, JH-13, and JH-15). Finally, JH-10 indicated the policy needs to be clearer in general.

With regard to training, four Juvenile Hall Group Counselors reported that they have received training involving the Transgender Policy, while ten reported that they have not received any training. Five of the ten who reported not having received any training reported they had training scheduled in the near future. Thirteen of the Juvenile Hall Group Counselors do believe that training is beneficial to staff. JH-12 reported training would not be beneficial for line staff. He believes the training should be given to the supervisors, as they will be most likely making most of the decisions involving transgender youth.

Finally, three of the Juvenile Hall Group Counselors interviewed stated that juveniles would be more willing to request an MDT assessment now that the Transgender Policy is in place. The reason found was that the policy is now known among the minors. Nine Juvenile Hall Group Counselors reported that the population of transgender youth is still too small; therefore, the establishment of the policy will not result in more juveniles requesting an MDT assessment. Three Juvenile Hall Group Counselors stated they were not sure if having the Transgender Policy will result in more juveniles being willing to request an MDT assessment.

## **Analysis**

### ***Phase I: Problem Identification***

Based on the findings there is a need for a transgender policy in Santa Clara County Juvenile Hall, and the present policy has been beneficial for the transgender youth in Juvenile Hall thus far. Information gathered from the survey conducted with the

Juvenile Hall Group Counselors indicated eighty percent reported there is a need for a transgender policy in Santa Clara County's Juvenile Hall.

The top three reasons for needing a transgender policy include transgender youth have equal rights and form part of the community we serve and should be served equally; for the safety and security of the minors and staff; and for the emotional well being of the transgender youth. Since the majority of the Juvenile Hall Group Counselors surveyed reported that a transgender policy is necessary, it appears the policy has been accepted by the Juvenile Hall staff thus far. Nonetheless, the findings also showed that twenty-five percent of the Juvenile Hall Group Counselors that reported there is a need for a transgender policy also believe that, although a policy is necessary, the transgender policy should not allow for a transgender youth to be housed in a unit of the opposite gender. Overall, it is a consensus among the majority of the Juvenile Hall staff that a transgender policy is indeed necessary in Santa Clara County Juvenile Hall.

### ***Phase II: Solution Development***

In examining the current policy, the purpose of the policy as it is written meets two of the needs as identified by the Juvenile Hall Group Counselors. As part of its purpose, the policy states it is to “create a safe environment for all youth, and ensure that all youth have equal access to all available service, care and treatment (Probation Department Juvenile Hall Procedures Manual, 2011, Part 6, p.1).” This statement supports the two main reasons a policy is necessary, as identified by the Juvenile Hall Group Counselors surveyed in Phase I.

Although the policy as it stands does meet the two top reasons a policy is needed from the Juvenile Hall Group Counselors' perspectives, there are other points identified

by the Group Counselors that the policy does not address. One main concern, found through interviewing the Juvenile Hall Group Counselors, is with the Transgender Preference form that the youth is able to fill out indicating his or her preferred name, pronoun, unit and gender of staff to conduct searches. The concern is that the transgender youth are being given too much freedom with these options. For example, in Juvenile Hall, every minor in custody is called by his last name; however, with the Transgender Preference form, the exception is made for the transgender youth who chooses to be called by a first name that is opposite of his gender. The Juvenile Hall Group Counselors stated that this is not fair for the other minors who are called by their last names. The Juvenile Hall Group Counselors believe that should not be an option available to the transgender youth.

Additionally, even some of those Juvenile Hall Group Counselors in support of a transgender policy reported that the transgender youth should not be allowed to choose the unit in which he is to be housed. As reported, this brings more safety issues for both the transgender youth as well as the unit staff. The safety issues reported by the Juvenile Hall Group Counselors include the potential for a physical fight among the juveniles in custody, because despite the gender identity, physically, a biological male is stronger than a biological female. For example, in the event that a fight takes place between a transgender youth (male to female) and a female youth housed in a female unit, the transgender youth may cause more physical harm to the female youth than another female would in the same circumstance.

Finally, it was found that the Juvenile Hall Group Counselors believe that allowing the transgender youth to choose the gender of the staff to conduct searches also

brings safety issues and increases the possibility of accusations for the Juvenile Hall staff. The safety issues include the increased possibility of contraband entering the facility due to ineffective searches made as a result of fear of an accusation made by a transgender youth to a staff member of the opposite gender.

Taken as a whole, it appears that the transgender policy as it stands does support the needs as identified by the Juvenile Hall Group Counselors; however, there is a need for continued improvement in creating and implementing specific portions of the transgender policy as it is written. An outcome analysis of the current policy should be completed at the end of two years to determine if the potential problems like fights and staff accusations raised by the counselors have actually occurred.

### ***Phase III: Implementation***

In addition to exploring the point of view of the Juvenile Hall Group Counselors' perspectives, the findings of the interviews conducted with the Juvenile Hall mental health staff also helped clarify some of the terms of the policy and also supported the establishment of the transgender policy. Based on the findings from the mental health staff, it was clarified that the main criterion for the transgender youth to qualify for the transgender policy to apply is that he or she must have a DSM-IV diagnosis of gender identity disorder. Should the minor not have a DSM-IV diagnosis, a psychological evaluation can be conducted on behalf of Juvenile Hall's mental health staff to determine if the youth has a gender identity diagnosis. Therefore, it is not possible for any minor to claim he is transgender, and then be placed in a unit of the opposite gender without a diagnosis.

Moreover, it was made clear that the final decision on the programmatic arrangements are made as a team among the parties present at the MDT meeting, which may include the minor's parents, Probation Officer, counselors, medical psychiatrist and other relevant persons. All decisions are made with the transgender youth's well being in mind. Additionally, it was also found that all of the Juvenile Hall mental health staff members interviewed are in support of the transgender policy and believe it is still evolving. All mental health staff members interviewed are in agreement that the policy has been working well thus far; but stated that more training and education are need for the Juvenile Hall staff. Overall, the mental health staff members interviewed believe that there is still a stigma about being transgender; therefore, not all transgender youth will request an MDT. The majority of the mental health staff also believes that the request for an MDT has to come from the minor.

#### ***Phase IV: Feedback Evaluation***

In interviewing the Group Counselors it was discovered that eighty-seven percent stated they knew where to locate the transgender policy; however, only fifteen percent reported knowing the terms of the policy. The Group Counselors are aware that there is a policy in place, but there are only a few that know what the policy entails. This indicates that more training and education is needed to inform the Juvenile Hall staff about the current policy. Furthermore, the Group Counselors were also asked if they had received training on the transgender policy, and only four out of fifteen reported having received training on the policy. Eleven out of the fifteen Group Counselors interviewed stated they had not received any training regarding the policy. In addition, eighty six percent of those interviewed stated that training would be beneficial; therefore it is clear that the

Group Counselors seek more knowledge about the policy. This supports the conclusion that more training and education is necessary in order to use the transgender policy for its stated purpose and to its full potential.

Moreover, although the majority of the Juvenile Hall Group Counselors reported that more training on the actual policy is necessary, it was discovered that seventy-three percent of the Group Counselors reported the transgender policy should be changed in some way. The changes include eliminating the policy entirely or having a policy that provides support and some programmatic arrangements, but not allow the transgender youth to be housed in a unit with the opposite gender. This shows that the Group Counselors are willing to embrace the transgender policy; however they are still conservative in some respects and believe that housing minors in a unit with the opposite gender opens up more possibilities for safety issues to arise. With regard to juveniles being more willing to request an assessment for the transgender policy, the majority believe that there will not be an increased request because the transgender population is still too small.

### **Recommendations**

The findings from the research support several recommendations. First, the Santa Clara County Juvenile Hall should maintain a transgender policy in effect. It is supported by Juvenile Hall Group Counselors as well as Juvenile Hall mental health staff. The transgender policy in place will provide assistance and support for the transgender population in Juvenile Hall. Furthermore, it will provide equal access to all available services to the transgender youth in custody.

In addition, it is recommended that more education and training be provided to the Juvenile Hall Group Counselors. First, steps must be taken to ensure that all mental health staff and Group Counselors receive training on the content of the policy and its application to the management of Juvenile Hall. Second, more education is necessary in order for the Group Counselors to gain knowledge about the transgender population in general. With more education, the Group Counselors will learn how to be more inclusive with the transgender population, as well as accepting of transgender youth.

Finally, since the policy is relatively new, it is recommended that the Department of Correction start a committee which includes Juvenile Hall Group Counselors, Probation Officers, and mental health staff to examine the policy and make appropriate changes that will best serve both the youth, as well as the Juvenile Hall staff in general. This committee should undertake an outcome evaluation at the end of two years of implementation to determine whether the existing policy provides appropriate guidance for the management of transgender youth, or whether changes are needed to enhance youth safety and staff protection from unwarranted accusations.

### **Conclusion**

With the increased awareness of the transgender community, agencies like Juvenile Hall are beginning to prepare to address issues that surround the transgender population by establishing transgender policies such as the current policy in Santa Clara County Juvenile Hall. The findings of this research show that there is support from the Juvenile Hall mental health and Group Counselor staff members for the current transgender policy. However, the survey comments show that there is also room for

change, and it appears that this is only the beginning, as the current policy will continue to evolve in the future.

Overall, education is key; it is important for Juvenile Hall management to continue to seek knowledge on the transgender population in general in order to provide the best services to them. The juveniles in Juvenile Hall have rights, and they should receive services that will support their well being and serve to assist them in rehabilitating their behavior.

In addition to more education for the staff in juvenile detention facilities, it is necessary to provide additional training on the existence and the protocols of the transgender policy that is currently in effect. The findings indicated that although the majority of the Group Counselors are aware that there is a transgender policy in place, the majority also did not know the terms of the policy. This indicates that there is a lack of training and a lack of knowledge among the Group Counselors. In order for the policy to serve its purpose, it is very important for the staff that is supposed to be implementing the policy to be knowledgeable about the terms of the policy. Although it is a policy that is not commonly used, it is still imperative for the staff to be prepared to enforce the terms of the policy if it is needed.

Finally, there are legitimate concerns from the Juvenile Hall Group Counselors regarding parts of the transgender policy as it stands. It is clear that the staff from Juvenile Hall who were interviewed are in support of having a transgender policy in place; however, the safety concerns found are realistic and it appears to be reasonable to re-visit the terms of the transgender policy as it stands in order to modify it to better address the concerns of the Juvenile Hall staff, as well as the well being of the

transgender youth. Nonetheless, it is also important to note that given the nature of the environment, there will always be safety concerns for minors in custody whether they are transgender or not.

This research focused on the current transgender policy in Santa Clara County Juvenile Hall. Further research would be beneficial to include information from other urban counties that also have a transgender policy in place to compare them and their outcomes to determine what works best. In addition, this research only involved the perspectives of the Juvenile Hall Group Counselors and the Juvenile Hall mental health staff; however, more research involving Juvenile Hall supervisors, management and even Probation Officers may also be beneficial in order to gain knowledge from different points of views. Furthermore, since the transgender policy is not used very often, a longitudinal study may be beneficial in order to follow the policy every time it is put into practice over several years. It is hoped that more research is conducted on this topic in order to better serve the transgender youth in detention facilities so that they rehabilitate while in the juvenile justice system, and discontinue their delinquent behavior.

## Appendix A

### Definition of Terms

**Agender-** A person who is internally ungendered or does not have a felt sense of gender identity.

**Androgynous-** A person appearing and/or identifying as neither man nor woman, presenting a gender either mixed or neutral.

**Ally-** Someone who advocates for and supports members of a community other than their own. Reaching across differences to achieve mutual goals.

**Asexual-** A person who is not sexually attracted to any gender.

**Bi-gender-** A person whose gender identity is a combination of man and woman

**Bi-phobia-** The irrational fear and intolerance of people who are bisexual.

**Bisexuality-** Also bi. A person who is attracted to two sexes or two genders, but not necessarily simultaneously or equally. This used to be defined as a person who is attracted to both genders or both sexes, but since there are not only two sexes (see intersex and transsexual) and there are not only two genders (see transgender), this definition is inaccurate.

**Coming out-** To recognize one's sexual orientation, gender identity, or sex identity, and to be open about it with oneself and with others.

**Crossdresser-** Someone who wears clothes associated with another gender part of the time. This term has replaced "transvestite," which is now considered outdated and offensive.

**Drag-** The act of dressing in gendered clothing and adopting gendered behaviors as part of a performance, most often clothing and behaviors typically not associated with your gender identity. Drag Queens perform femininity theatrically. Drag Kings perform masculinity theatrically. Drag may be performed as a political comment on gender, as parody, or simply as entertainment. Drag performance does not indicate sexuality, gender identity, or sex identity.

**FTM/F2M-** Abbreviation for a female-to-male transgender or transsexual person.

**Gay-** Men attracted to men. Colloquially used as an umbrella term to include all LGBTIQ people.

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**Gender-** A socially constructed system of classification that ascribes qualities of masculinity and femininity to people. Gender characteristics can change over time and are different between cultures. See "Gender Identity" and "Gender Expression" for more on gender.

**Gender Conformity-** When your gender identity, gender expression and sex “match” according to social norms. See "Gender Identity," "Sex" and "Gender Expression" for more on gender.

**Gender Expression-** The way in which a person expresses his or her gender identity through clothing, behavior, posture, mannerisms, speech patterns, activities and more.

**Gender Fluid-** A person whose gender identification and presentation shifts, whether within or outside of societal, gender-based expectations.

**Gender Identity-** An individual’s internal sense of gender, which may or may not be the same as one’s gender assigned at birth. Some gender identities are "woman," "transman" and "agender" but there are many more. Since gender identity is internal it is not necessarily visible to others. Additionally, gender identity is often conflated with sex, but they are separate concepts – please see GenEq’s Gender/Sex Infosheet for more on the difference between the two.

**Gender Identity Disorder-** The medical diagnosis in the American Psychiatric Association’s Diagnostics and Statistics Manual IV (DSM4) used to describe a person who experiences significant gender dysphoria (lack of identification with one’s sex and/or gender assigned at birth). It is anticipated that the DSM5 (released in 2013) will replace this diagnosis with "gender dysphoria."

**Gender Non-Conforming-** A person who doesn’t conform to society's expectations of gender expression based on the gender binary, expectations of masculinity and femininity, or how he or she should identify his or her gender.

**Genderqueer-** A person whose gender identity is neither man nor woman, is between or beyond genders, or is some combination of genders. This identity is usually related to or in reaction to the social construction of gender, gender stereotypes, and the gender binary system. Some genderqueer people identify under the transgender umbrella while others do not.

**Gender Role-** How “masculine” or “feminine” an individual acts. Societies commonly have norms regarding how males and females should behave, expecting people to have personality characteristics and/or act a certain way based on their biological sex.

**Gender Variant-** A synonym for "gender diverse" and "gender non-conforming"; “gender diverse” and “gender non-conforming” are preferred to “gender variant” because variance implies a standard normativity of gender

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**Hate Crime-** Hate crime legislation often defines a hate crime as a crime motivated by the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.

**Homophobia-** The irrational fear and intolerance of people who are homosexual or of homosexual feelings within one's self. This assumes that heterosexuality is superior.

**Homosexuality-** Sexual, emotional, and/or romantic attraction to the same sex.

**Intersex-** Intersex is a set of medical conditions that feature congenital anomaly of the reproductive and sexual system. That is, intersex people are born with "sex chromosomes," external genitalia, or internal reproductive systems that are not considered "standard" for either male or female. The existence of intersexuals shows that there are not just two sexes and that our ways of thinking about sex (trying to force everyone to fit into either the male box or the female box) is socially constructed.

**In the Closet-** Keeping one's sexual orientation and/or gender or sex identity a secret.

**Invisible Minority-** A group whose minority status is not always immediately visible, such as some disabled people and LGBTIQ people. This lack of visibility may make organizing for rights difficult.

**Lambda-** The Gay Activist Alliance originally chose the lambda, the Greek letter "L," as a symbol in 1970. Organizers chose the letter "L" to signify liberation. The word has become a way of expressing the concept "lesbian and gay male" in a minimum of syllables and has been adopted by such organizations as Lambda Legal Defense and Education Fund.

**Lesbian-** A woman attracted to a woman.

**LGBTIQ-** Lesbian, Gay, Bisexual, Transgender, Intersex, Queer.

**MSM-** Men who engage in same-sex behavior, but who may not necessarily self-identify as gay or bisexual.

**MTF/M2F-** Abbreviation for male-to-female transgender or transsexual person.

**Out (of the Closet)-** Refers to varying degrees of being open about one's sexual orientation and/or sex identity or gender identity.

**Pangender-** A person whose gender identity is comprised of all or many gender expressions

**Pansexual-** A person who is fluid in sexual orientation and/or gender or sex identity.

**Polyamory-** Polyamory is the practice of having multiple open, honest love relationships.

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**Queer-** An umbrella term to refer to all LGBTIQ people

**Sex-** A medical term designating a certain combination of gonads, chromosomes, external gender organs, secondary sex characteristics, and hormonal balances. Common terms are “male, “female” and "intersex."

**Sex Reassignment Surgery (SRS)/Sex Confirmation Surgery-** A term used by some medical professionals to refer to a group of surgical options that alter a person’s sex to match their sex identity.

**Sexual Orientation-** The deep-seated direction of one's sexual (erotic) attraction. It is on a continuum and not a set of absolute categories. Sometimes referred to as affection, orientation, or sexuality. Sexual orientation evolves through a multistage developmental process, and may change over time. Asexuality is also a sexual orientation.

**Stereotype-** An exaggerated oversimplified belief about an entire group of people without regard for individual differences.

**Tranny-** A derogatory term used to refer to a trans-identified person. Sometimes a term reclaimed by trans\* people for empowerment.

**Transgender-** Transgender (sometimes shortened to trans or TG) people are those whose psychological self ("gender identity") differs from the social expectations for the physical sex they were born with. To understand this, one must understand the difference between biological sex, which is one's body (genitals, chromosomes.), and social gender, which refers to levels of masculinity and femininity. Often, society conflates sex and gender, viewing them as the same thing, but gender and sex are not the same thing. Transgender people are those whose psychological self ("gender identity") differs from the social expectations for the physical sex they were born with. For example, a female with a masculine gender identity or who identifies as a man; an umbrella term for transsexuals, cross-dressers (transvestites), transgenderists, gender queers, and people who identify as neither female nor male and/or as neither a man or as a woman. Transgender is not a sexual orientation; transgender people may have any sexual orientation. It is important to acknowledge that while some people may fit under this definition of transgender, they may not identify as such.

**Transition-** A complicated, multi-step process that can take years as transgender people align their anatomy with their sex identity and/or their gender expression with their gender identity.

**Transman-** An identity label sometimes adopted by female-to-male transsexuals to signify that they are men while still affirming their history as females; also referred to as “transguy(s).”

**Transphobia-** Fear or hatred of transgender people; transphobia is manifested in a number of ways, including violence, harassment and discrimination.

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**Transsexual-** Transsexual refers to people who experience a mismatch of the sex they were born as and the sex they identify as. A transsexual sometimes undergoes medical treatment to change his/her physical sex to match his/her sex identity through hormone treatments and/or surgically. Not all transsexuals can have or desire surgery.

**Transvestite-** Individuals who regularly or occasionally wear the clothing socially assigned to a gender not their own, but are usually comfortable with their anatomy and do not wish to change it (i.e. they are not transsexuals). Cross-dresser is the preferred term for men who enjoy or prefer women's clothing and social roles. Contrary to popular belief, the overwhelming majority of male cross-dressers identify as straight and often are married. Very few women call themselves cross-dressers.

Source: U.C. Berkeley Gender Equity Resource Center: Definition of Terms more terms available at [http://geneq.berkeley.edu/lgbt\\_resources\\_definition\\_of\\_terms](http://geneq.berkeley.edu/lgbt_resources_definition_of_terms)

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## Appendix C

### Juvenile Hall Mental Health Staff Interview Questions

1. How long have you been working in Juvenile Hall?
2. How long have you been in the mental health field of work?
3. Have you ever worked with transgender youth in the past?
4. With regard to the Transgender Policy, after admission, how soon does the Multi Disciplinary Team (MDT) evaluation take place?
5. What kinds of questions are asked or what is looked for at the MDT evaluation?
6. What criteria does the minor have to meet in order for the Transgender Policy to apply?
7. How much influence do the other parties at the MDT meeting have on the final decision of the treatment plan?
8. What is a typical agenda for the MDT meeting?
9. What types of programmatic arrangements are set in place?
10. Once the programmatic arrangements are made who is notified (JH staff, parents, PO, other)?
11. Once the programmatic arrangements are made, how are the arrangements communicated to Juvenile Hall staff or other parties involved?
12. Is hormone medication part of the programmatic arrangements?
13. Upon the minor's release, what happens to the arrangements that were made? Are they documented somewhere?

14. If the minor is released and comes back into custody does a new MDT evaluation take place? Does the process start over?
15. In your opinion, has the policy been helpful for transgender youth? If so, in what ways?
16. How often is the transgender youth seen by mental health staff during his or her stay in Juvenile Hall?
17. Do you see anything that should be changed with the Transgender Policy now that it has been used?
18. Based on your observations made so far, has the Transgender Policy resulted in juveniles being more willing to request an MDT assessment?

## Appendix D

### Juvenile Hall Staff Interview Questions

1. How long have you been working in Juvenile Hall?
2. How long have you worked with youth in general?
3. Have you ever worked with transgender youth in the past?
4. Do you know where to find the Transgender Policy?
5. Do you know what the Transgender Policy consists of?
6. Do you know what steps need to be taken when a transgender youth is admitted into Juvenile Hall?
7. Have you had to work with a minor for whom the transgender policy was applied?
8. Did you have to make any programmatic arrangements for the minor?
9. How were the programmatic arrangements communicated to you?
10. Do you see anything that should be changed with the Transgender Policy now that it has been used?
11. Has there been any training for Juvenile Hall staff regarding the transgender policy? If not, would training be beneficial?
12. Based on your observations made so far, has the Transgender Policy resulted in juveniles being more willing to request an MDT assessment?

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