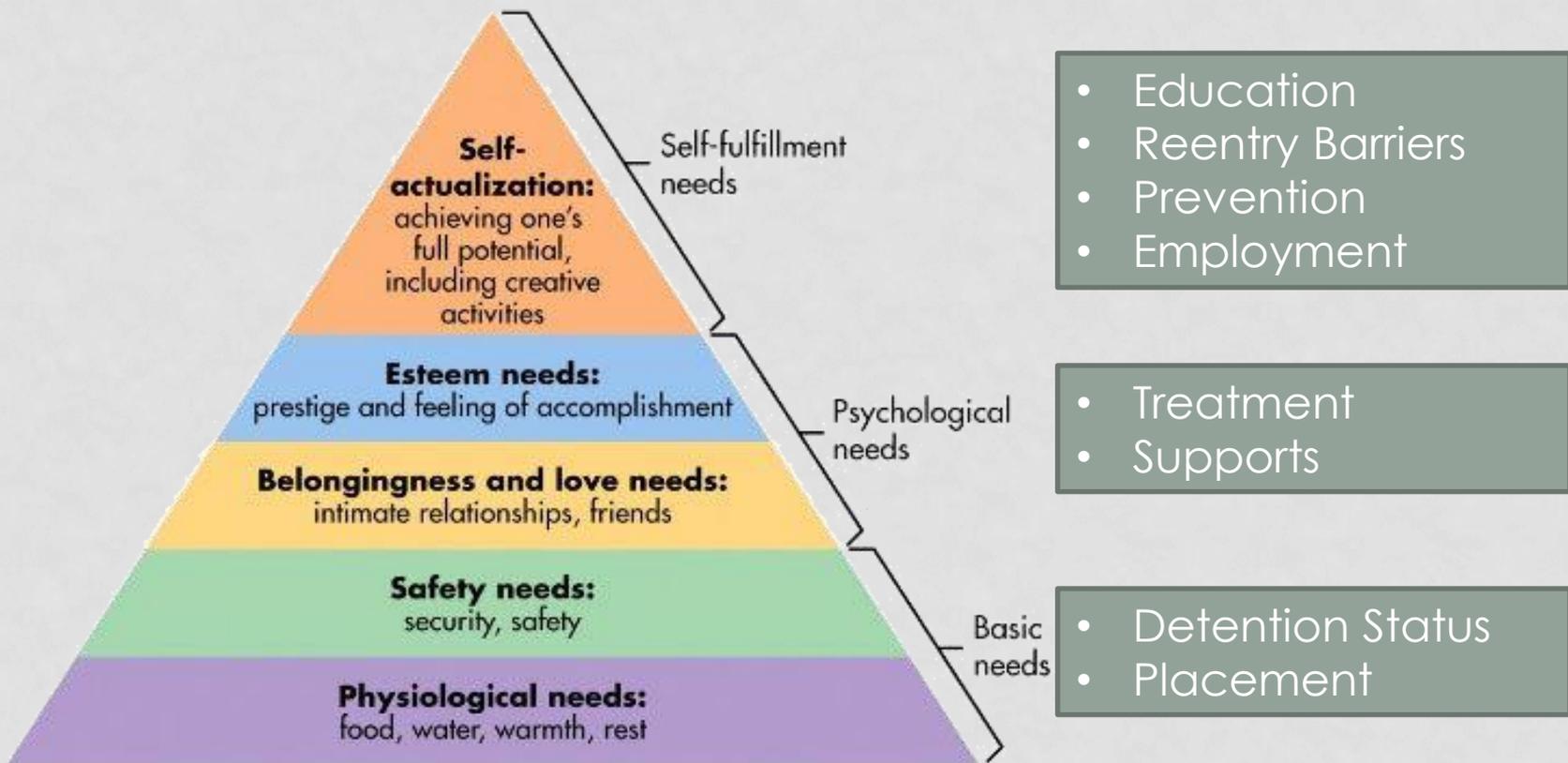


THINKING OUTSIDE THE COMPLAINT:

REPRESENTING THE WHOLE CHILD

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THE WHOLE CHILD APPROACH



THE WHOLE CHILD APPROACH

- Traditional defense work:
 - Focused on the charges and legal challenges
 - Focused on negotiation with the prosecution
- Why is it important to look at the whole child?
 - It's best practice: National Juvenile Defense Standards
 - The defender can play a critical role in preventing future court involvement and a child's future success
 - The defender must understand the circumstances of each individual child to counsel the child and be the best advocate for the child's expressed interests

NATIONAL JUVENILE DEFENSE STANDARDS



Models for Change
National Network of Juvenile Justice

ISSUES TO LOOK FOR

- Charge
- Housing
- Services
- Competency
- PCSA involvement
- Prior court involvement
- Mental health
- Substance abuse
- Immigration
- Parent/child conflict
- And more.....

INTERVIEWING

- Prepping for interview
- Challenges
- Interviewing for strength

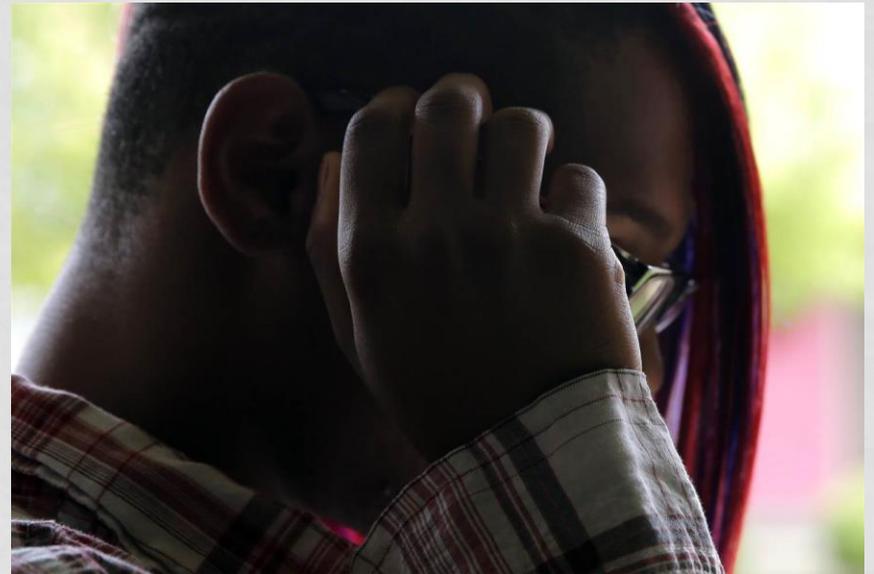
CASE STUDY: J.S.

Client: J.S.

Age: 16

Charge: Assault (on another youth in placement)

J.S. comes to your office for an office conference. When reviewing the court rap sheet, you note that J.S. is a 16 year old male with a few prior misdemeanor adjudications for menacing and assault. When you meet J.S., it is apparent that J.S. identifies as a female, as she introduces herself with a different name and is dressed as a female.



CASE STUDY: J.S.

J.S. tells you that she has been in the permanent custody of the state since she was 3 years old due to an abusive parent. She has not seen her mother in years. J.S. has been through over 20 placements, and has been in a number of abusive foster care placements. She has been residing in a crisis care facility for over a year due to difficulties finding placement that will accommodate her gender identity, which is the source of a lot of her conflicts.

CASE STUDY: J.S.

- What additional information would you seek after meeting with J.S.?
 - Children's Services history
 - Mental Health records
 - Placement status/information
- What potential sources can you obtain information from?
 - Case worker
 - Mental health provider
 - Guardian ad litem

STRATEGIES FOR REPRESENTING LGBT YOUTH: CLIENT INTERVIEW

- What are some ways you can build rapport with J.S.?
- What strategies can you use to facilitate safe conversations around J.S.'s gender identity and sexual orientation?

COMMON LGBT TERMS AND DEFINITIONS

*excerpts from NJDC JTIP Handout, non-exhaustive list

- **Ally:** an individual who is not lesbian, gay, bisexual or transgender who is supportive of the LGBT community. Allies challenge homophobic and heterosexist remarks and behaviors and are willing to explore and understand those forms of bias within themselves.
- **Bisexual:** a person who is emotionally, romantically and sexually attracted to both men and women.
- **Coming out:** the process of disclosing one's sexual orientation or gender identity to others. Because most people in our society are presumed to be heterosexual, coming out is not a discrete event, but a lifelong process. Heterosexual family members or allies of LGBT persons also experience "coming out" when they disclose to others that they have friends or relatives who are LGBT.
- **Gay:** a person whose emotional, romantic and sexual attractions are primarily for individuals of the same sex, typically in reference to men. In some contexts, it is still used as a general term for gay men and lesbians.

COMMON LGBT TERMS AND DEFINITIONS

- **Gender expression:** a person's expression of his or her gender identity, including his or her characteristics and behaviors such as appearance, dress, mannerisms, speech patterns and social interactions.
- **Gender identity:** a person's internal, deeply felt sense of being male or female, something other or in-between. Everyone has a gender identity.
- **Gender non-conforming:** having or being perceived to have gender characteristics and/or behaviors that do not conform to traditional or societal expectations. Gender non-conforming people may or may not identify as LGBT.
- **Genderqueer:** a term of self-identification for people who do not identify with the restrictive and binary terms that have traditionally described gender identity (for instance, male or female only). Also see gender non-conforming, queer and transgender.
- **Homosexual:** a term used to refer to a person based on his or her same-sex sexual orientation, identity or behavior. Many LGBT people prefer not to use this term – especially as a noun – because of its historically negative use by the medical establishment.

COMMON LGBT TERMS AND DEFINITIONS

- **Intersex:** a term used to refer to an individual born with a reproductive or sexual anatomy that does not conform exclusively to male or female norms in terms of physiological sex (this may include variations of genetics, genital or reproductive structures or hormones). According to the Intersex Society of North America (ISNA) – an organization that advocates and educates about intersex concerns – about one in every 2,000 children is born intersex. Many intersex people prefer this term to the historically negative term hermaphrodite. An intersex person may or may not identify as LGBT.
- **In the closet:** keeping one's sexual orientation or gender identity secret.
- **LGBT:** common acronym for Lesbian, Gay, Bisexual, and Transgender – persons that despite their differences are often discriminated against in similar ways. Sometimes written to include Q for Questioning and/or Queer, I for Intersex and/or A for Ally. May also be written as GLBT.
- **Lesbian:** a woman whose emotional, romantic and sexual attractions are primarily for other women.

COMMON LGBT TERMS AND DEFINITIONS

- **Queer*:** a historically derogatory term for a gay man, lesbian or gender-nonconforming person. The term has been widely reclaimed, especially by younger LGBT people, as a positive social and political identity. It is sometimes used as an inclusive or umbrella term for all LGBT people; more recently, queer has become common as a term of self-identification for people who do not identify with the restrictive and binary terms that have traditionally described sexual orientation (for instance, gay, lesbian, or bisexual only). Some LGBT community members still find queer an offensive or problematic term. Also see genderqueer.
- **Questioning:** an active process in which a person explores his or her own sexual orientation and/or gender identity and questions the cultural assumptions that he or she is heterosexual and/or gender-conforming. Many LGBT people go through this process before “coming out.” Not all people who question their identities end up self-identifying as LGBT.

COMMON LGBT TERMS AND DEFINITIONS

- **Transgender:** an umbrella term that can be used to describe people whose gender expression is non-conforming and/or whose gender identity is different from their assigned sex at birth. This term can include transsexuals, genderqueers, cross-dressers, and others whose gender expression varies from traditional gender norms.
- **Transition:** The time period when a transgender person starts living as the gender he or she identifies as: often includes a change in style of dress, selection of new name, a request that people use the correct pronoun and possibly hormone therapy and/or surgery.
- **Transsexual:** a term for someone who transitions from one physical sex to another, in order to bring his or her body more in line with his or her innate sense of gender identity. It includes those who were born male but whose gender identity is female and those who were born female but whose gender identity is male, as well as people who may not clearly identify as either male or female. Transsexual people have the same range of gender identities and gender expression as other people. Many transsexual people refer to themselves as transgender.

STRATEGIES FOR REPRESENTING LGBT YOUTH: : CLIENT INTERVIEW

- Avoid assumptions
- Use open-ended questions
 - Ask questions to ensure safety and comfort
- Explain attorney client privilege
- Maintain privacy as your client desires
- Use the client's own language
 - Ask about preferred pronoun if unsure
- Avoid judgment and signal acceptance
- Elicit information to aid in identifying safe alternatives to detention
- Talk to client about LGBT resources in the community

*Adapted from Juvenile Training Immersion Program Lesson 7: Sexual Orientation, Gender Identity, and Gender Expression

STRATEGIES FOR REPRESENTING LGBT YOUTH: IN THE COURTROOM

- What challenges might you have in obtaining a good result for J.S.?
- What are ways you can respond to bias in the courtroom?
 - Inform court of preferred pronoun and use it
 - Bring in other supportive/affirming adults
- What are ways you can advocate for J.S. if she is detained?
 - Work with detention center on safe and gender affirming accommodations
 - Create release plan

STRATEGIES FOR REPRESENTING LGBT YOUTH: IN THE COURTROOM

- What are ways you can advocate for J.S. if the matter goes to trial?
 - Legal responsibility: trauma response, treatment plan failures
 - Juv. R. 29(F)(2)(d)

STRATEGIES FOR REPRESENTING LGBT YOUTH: DISPOSITION

- What challenges do you anticipate encountering in disposition?
 - Treatment
 - Placement
- What should you incorporate in a disposition plan?

RESOURCES FOR LGBT YOUTH

- Ohio
 - Kaleidoscope
 - Lighthouse Youth Services- Safe and Supported
 - Local GLSEN chapter
- National
 - Lambda Legal
 - National Center for Lesbian Rights

CASE STUDY: BEN

- You are appointed as attorney for Ben, a 15 year old boy. Ben is charged with falsification. The complaint alleges that Ben was found in Trumbull County, Ohio, wandering a neighborhood late at night. When the police stopped Ben to question him, he gave them a different name. He told police that he was waiting for a ride to take him back to the hotel where he was staying. Ben did not know the name of the hotel and did not want to identify the name of the person giving him a ride.

CASE STUDY: BEN

- Police took Ben back to the station, where they searched him. They found a phone in his possession which gave away his real identity. Police also found a magazine sales sheet. When questioned again, Ben admitted his real name and gave the police his uncle's name and phone number.

CASE STUDY: BEN

- Ben is now back in Franklin County, living in a shelter care placement. His uncle refuses to come to court because he is worried about his own immigration status. He tells you that Ben has only been in the country for 8 months, that he doesn't have custody of Ben, that Ben's parents live in El Salvador, and that Ben came to the United States to make money to send back to his parents.

CASE STUDY: BEN

- What additional information would you seek after meeting with Ben?
 - Placement status/information
 - Employment/school information
- What potential resolutions to Ben's charges?
 - Safe Harbor
 - Custody resolution & SIJS

STRATEGIES FOR REPRESENTATION

Safe Harbor

- *ORC 2152.021 (F)*
- Allows diversion for youth identified or suspected as human trafficking victim
 - “reason to believe” + relation to victimization
- Diversion: placement, services, supervision + appointment of a guardian ad litem
- Successful completion = dismissal & expungement

STRATEGIES FOR REPRESENTATION

- Custody resolution
 - Uncle or PCSA

STRATEGIES FOR REPRESENTATION

- Special Immigrant Juvenile Status
- 8 U.S.C. § 1101 (a)(27)(J)
 - a **child** who has been declared “dependent” on a juvenile court
 - the child cannot be reunified with one or both of the juvenile’s parent(s) ON ACCOUNT OF ABUSE, NEGLECT or ABANDONMENT; and
 - it is not in the best interest of the child to be returned to his/her home country or country of last habitual residence

* “dependent” as used in the federal immigration law is not defined and does NOT equate to any particular state’s definition of dependency

RESOURCES FOR HT VICTIMS

- <http://humantrafficking.ohio.gov/>
 - Training, coalition maps, resources, laws, links
- <http://www.supremecourt.ohio.gov/JCS/CFC/resources/juvenileHumanTrafficking.pdf>
 - Bench card on HT & trauma
- <http://www.ohioattorneygeneral.gov/HumanTrafficking>
 - Reports, resources

RESOURCES FOR IMMIGRANT YOUTH

- <https://www.ohiobar.org/ForPublic/Resources/LawYouCanUse/Pages/Ohio-Courts-Play-Important-Role-for-Immigrant-Children.aspx>
- https://www.ilrc.org/sites/default/files/resources/sijs-4th-2015-ch_03.pdf