

Frequently Asked Questions

About the Gender-Based Licensing Variance Request Process in Michigan

This document provides detailed information about the “Gender-Based Licensing Variance,” Michigan’s CI 19-102, that may be relevant to child caring institutions (CCIs) and child placement agencies (CPAs) in Michigan. According to licensing rule 137.(2) “Residents of the opposite sex, if either is over 5 years of age, shall not sleep in the same sleeping room.” This variance allows alternative placements based on gender when appropriate.

Background: At times, a variance to a licensing rule may be requested and approved to allow for an acceptable alternative to the rule. This variance request was specifically created for transgender and gender non-conforming (TGNC) youth who need placement in a CCI (child caring institution) or a foster home, when there is a barrier based on placement/bed availability that may be able to be resolved with a rule variance.

For an overview of terms and concepts related to gender identity and expression and information about gender identity development, start with [Gender Basics](#)

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When should this variance request be used?

Rule 137.(2) outlines that individuals of “opposite sex” over the age of 5 may not share a sleeping room. For some TGNC youth, their gender identity does not match the sex they were assigned at birth.

A CCI may request a variance to Rule 400.4137(2) for a youth who identifies as TGNC to share a sleeping room based on their gender identity. For example, a transgender female may identify as a girl, use a feminine name and pronouns to refer to herself, and dress in traditionally feminine clothing despite being assigned male at birth. Since the rule requires youth to be housed based on “sex [assigned at birth],” the child may be automatically placed in a CCI with a male roommate because her birth certificate or other identification says male, with no regard for the child’s gender identity. The child, in conjunction with placement workers and other support staff, may deem it safer to share a living space with another female-identified roommate. In that case, the CCI can submit a variance request to procure proper placement for the child. Ultimately, it is up to the youth and those working with them to determine what is the safest, most comfortable living situation for them. Every TGNC youth is different.

Why do we need a variance for transgender & gender non-conforming youth?

This variance is an extremely important opportunity for CCIs and CPAs (child placing agencies) to protect youth that we know are in our care. If these youth continue to go unseen, being in care may mean being misgendered if they cannot be in a bed consistent with their gender. Being in care might also mean being outed for TGNC youth when they can’t be in a bed consistent with their gender. We know that misgendering and outing TGNC youth increases suicidality, depression, substance abuse and HIV/STIs.

The more consistently a TGNC young person is referred to by the correct name and pronouns across different contexts, the greater the benefit to their psychological health and wellbeing. Transgender young people who are able to use their correct name and pronouns across all aspects of their lives experienced 71% fewer symptoms of severe depression, a 34% decrease in reported thoughts of suicide, and a 65% decrease in suicidal attempts.

The benefits of proper placement are not solely psychological, but physiological as well. Chronic exposure to stress, which exactly how transgender young people experience being treated in a manner that is inconsistent with their gender identity, results in persistent surges of cortisol in the brain. This leads to a wide array of short- and long-term detrimental consequences, all of which can permanently affect development, emotional and mental health, and quality of life. Those secondary effects can include increased difficulty in differentiating between threatening and safe situations, impaired short-term and long-term memory, struggles with attention, issues with mood control, diabetes, heart disease, and cancer.

By facilitating this variance for youth to be placed in a bed consistent with their gender, we are doing our job to protect youth in care.

How will a child welfare worker know when to use this variance?

Although a worker can observe a child’s gender expression, a worker cannot independently determine the child’s gender identity through observation alone. The most important source of information about a child’s gender identity is the child. Children’s capacity and willingness to discuss their gender identity varies. Some TGNC children, including some very young children, may describe their gender identity unequivocally and directly (“I am a boy” or “I have a girl brain

and a boy body”). For other children, the process of discovering and naming their gender may be more nuanced or complex, unfolding over time.

The worker’s objective is not necessarily to definitively label the child’s gender identity, but to listen to the child’s experience and to honor and support the child’s gender as that child currently describes and expresses it.

The worker should also talk to other adults who know the child and can offer insight about the child’s experiences, behavior, identity, strengths and challenges. After talking with the child and knowledgeable adults, if the worker is uncertain about how to support the child’s healthy gender development, the worker should consult with a competent clinician who is experienced in working with TGNC children.

Child welfare workers should develop case plans that support the healthy gender development of every child, including children who are gender nonconforming and children whose gender identity is different from their assigned sex.

Can a CCI that is licensed to provide services to only “male sex” or “female sex” individuals submit a licensing variance request?

Yes, a CCI that is licensed for terms that include male sex only or female sex only may accept placement of a youth who identifies as transgender or gender non-conforming, by requesting a variance to Rule 400.4104.

A variance will be granted for this rule only as it pertains to the terms of the license.

Who is responsible for submitting variance requests?

The variance request must be submitted to DCWL by the CCI, for a youth to be placed there, or by a child placing agency (CPA) for a child to be placed into a foster home.

CCIs: Variance information should be provided by the youth’s juvenile justice/foster care case manager, therapist, and others who can provide relevant information to support the request, to the designated individual at the CCI who will submit the request. Form: [CWL - 4006 Variance for CCIs](#)

Foster homes: Variances are prepared and submitted by a licensing worker for the identified foster home. The child’s foster care/JJ case manager, therapist, etc., should provide information for the request to the licensing worker. Form: [CWL - 4002 Variance for Foster Homes](#)

How should it be handled if the child sharing a bedroom with a TGNC child does not agree with it? Does the other child have rights in this situation? What about parents?

Ideally, staff should work with TGNC youth ahead of time to anticipate potential issues. This is an opportunity to get the youth’s consent to help them have the conversation with the potential roommate, and approach the potential roommate as an ally. If the potential roommate is virulently opposed and not able to move from that position, it’s probably not a good arrangement. If the roommate objects after the fact, ask staff to handle these complaints the same way they handle other similar complaints. Many CCIs have provisions by which youth are able to submit concerns to a supervisor or a therapist about their room assignment, and are able to make requests for roommate changes. In other words, youth may object to their roommate for any number of reasons. What if the youth objected based on the roommate’s body type, or ethnicity, or some other basis? It is an opportunity to talk about differences and to

work toward a positive solution. It may also be an opportunity to reassess the placement decision.

As for parents objecting, the facility is not at liberty to discuss confidential information about their child's roommate, including the roommate's gender identity, without that person's consent. The focus should be on reassuring the parents that the facility staff have made a thoughtful decision, consistent with agency policy, that ensures the safety and well-being of all youth. If the parents persist, it should be handled according to the facility's policy for handling complaints from parents. Someone in a leadership capacity, rather than line staff, should respond directly to parents, emphasizing the facility's policies and values rather than the specifics about individual youth. Additionally, helping parents to understand the needs of youth and reasons for room arrangements, including answering questions about staff supervision and bed-checks, may be helpful.

Gender Basics¹

What does the term "gender identity" mean?

Gender identity is a person's internal identification as male, female, or something in between or outside of the gender binary. Typically, medical personnel "assign" an infant's sex based primarily on the child's genitalia. An infant's assigned sex is typically recorded on the birth certificate, and is treated as the child's legal gender for most purposes. Most people's gender identity matches their assigned sex. However, some people have a gender that is different from the sex assigned to them at birth.

What does the term "transgender" mean?

"Transgender" refers to people whose gender identity is different from the sex assigned to them when they were born. For example, a transgender boy is a child who was assigned female at birth, but whose gender identity is male. Likewise, a transgender girl is a child who was assigned male at birth, but whose gender identity is female. Transgender identity is a part of natural human diversity, and should not be viewed or treated as negative or pathological. Although the prevalence of transgender children is unknown, researchers estimate that less than 0.3% of adults in the general population are transgender. The prevalence of transgender children in the foster care system appears to be much higher – up to 5%. Researchers hypothesize that these children are overrepresented in the child welfare system due to high rates of family rejection and social marginalization.

What does the term "gender expression" mean?

"Gender expression" is the manner in which people communicate their gender to others, through their clothing, mannerisms and hairstyle, for example. A person's gender expression may be fluid or even situational, meaning that the person presents their gender differently in different settings. For example, a child may wear stereotypically feminine clothing at home and stereotypically masculine clothing at school. A person's expression of gender may be neither masculine nor feminine or may combine masculine and feminine elements.

¹ Based on the brief "Transgender and Gender Nonconforming Children in California Foster Care"
<http://www.nclrights.org/wp-content/uploads/2016/02/TGNC-Children-in-CA-Foster-Care-2.24.16.pdf>

What does the term “gender nonconforming” mean?

“Gender nonconforming” describes people whose gender expression differs from the cultural norms prescribed for their assigned sex. The terms “gender expansive,” “gender diverse” and “gender variant” are also used to describe gender nonconforming individuals. Some gender nonconforming people have an identity that is “nonbinary,” meaning their gender identity is neither male nor female. Others identify as some combination of male and female. Still others identify as either male or female, but express their gender in ways that differ from stereotypical presentations. Not all gender nonconforming people identify as transgender. Regardless of how they identify, gender nonconforming individuals are vulnerable to varying levels of mistreatment and bias simply because they transgress social norms.

What does the term “sexual orientation” mean?

“Sexual orientation” describes a person’s emotional, romantic and/or sexual attraction to people of the same or different sex. Sexual orientation falls on a spectrum that ranges from exclusively attracted to men or to women, to attraction to both men and women (“bisexual”), to attraction to people of all genders (“pansexual”). Children may be aware of their sexual orientation as feelings of attachment or connection to others before they become sexually active. Most children are aware of sexual attraction by about age 10.

Sexuality and gender are related but distinct aspects of human identity. For example, a transgender person may identify as lesbian, gay, bisexual or some other sexual orientation. Child welfare personnel should not conflate sexual orientation and gender identity, and should not make assumptions about either aspect of a child’s identity based simply on the child’s gender expression.

What do we know about the development of gender identity?

The factors that influence the formation of a person’s gender identity are not completely understood. Existing evidence suggests that gender identity is either innate or fixed at an early age, and has a strong biological and genetic component. For this reason, it is misleading to pose a distinction between a person’s gender identity and their so-called “biological sex.” A person’s gender identity is not subject to voluntary control and cannot be changed by therapy or other means.

Gender identity does not follow a single developmental trajectory, and there is tremendous diversity among TGNC children. Children start to become aware of their gender identity between ages 18 months and 3 years. A significant number of young children exhibit gender nonconforming behavior, which may or may not persist beyond early childhood. By adolescence or young adulthood, many of these children develop a gender identity that is consistent with their assigned sex. Some of these children ultimately identify as lesbian, gay or bisexual. By contrast, transgender children tend to experience cross-gender identification that is “persistent, insistent and consistent.” Some transgender children experience clinically significant distress because their gender is different from their assigned sex. The signs of distress may manifest as depression, anxiety, self-harming or suicidality. This serious and unremitting emotional pain is referred to as “gender dysphoria,” which is a medical condition with well-established standards of care. Although there is increasing visibility of very young transgender children, many youth first experience gender dysphoria as teenagers or adults.

Resources for Supporting TGNC Youth

- [MDHHS Practice Guide for Working with LGBTQIA2S+ Youth in the Child Welfare System](#)
- [A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-Conforming Youth](#)
- [Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System](#)
- [Caring for LGBTQ Children & Youth: A Guide for Child Welfare Providers](#)
- [Getting Down to Basics: Tools to Support LGBTQ Youth in Care](#)
- Ruth Ellis Center, LGBTQ Specific Agency, Child Welfare specific services:
 - [Family Preservation Program](#): Free family support services for LGBTQ youth and families involved in foster care to increase well-being and permanency.
 - [Journey Ahead Retreat](#): A paid 3 day retreat for LGBTQ youth in foster care, ages 14-21.

Training and Consultation for all Child Caring Institutions:

- [Ruth Ellis Center](#), whose mission is “Creating opportunities with LGBTQ+ young people to develop their vision for a positive future,” provides training and support on working with diverse SOGIE youth across contexts.

Training and Consultation for Juvenile Justice Residential Facilities:

- The [Michigan Center for Youth Justice](#) “[Advancing Justice for Youth with Diverse SOGIE in Wayne County](#)” project involves training and policy review for facilities serving youth from Wayne County to support their work with youth with diverse SOGIE.

For more information, or to get your facility involved, contact: Heidi Frankenhauser (she/her/hers), MCYJ Operations Manager, hfrankenhauser@miyouthjustice.org

Licensing Variance Request Form:

- [MDHHS Communication Issuance on Gender Variance](#)
- Variance Request Forms:
 - [CWL - 4006 Variance for CCI's](#)
 - [CWL - 4002 Variance for Foster Homes](#)
 - [MiSACWIS DCWL Paperwork Flow \(CPA\)](#)

For questions specific to the gender-based licensing variance submission process contact Angela Hull (she/her/hers), HullA2@michigan.gov

SOGIE Policy Expertise:

For questions specific to national SOGIE policy contact Shannan Wilber, Esq (she/her/hers), NCLR Youth Policy Manager, SWilber@NCLRights.org

Educational & Youth Focused SOGIE Resources:

- Animated video [resources](#) for understanding diverse SOGIE (and other topics), good for youth and staff alike.
- Free activity and lesson plan [resources](#) for youth (K-12) from GLESEN.