

STATE OF ILLINOIS
ONE HUNDRED FIRST GENERAL ASSEMBLY
SENATE

Senate Resolution No. 403

Offered by Senator Julie A. Morrison

WHEREAS, The Foster Children's Bill of Rights Act (20 ILCS 521/1) gives every child and adult in the care of the Department of Children and Family Services the right: "[t]o have caregivers and child welfare personnel who have received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care[; ...] [t]o have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived...sexual orientation, [or] gender identity [; ...] [t]o receive medical..., and mental health services[; ... and] [t]o receive a copy of [the Foster Children Bill of Rights] from and have it fully explained by the Department of Children and Family Services when the child or adult is placed in the care of the Department of Children and Family Services"; and

WHEREAS, CFS form 496-1 (Revised July 2018), the Illinois Foster Child and Youth Bill of Rights, further provides specific requirements for when the Department of Children and Family Services must provide children and youth with a copy of these Rights and states that children and youth have the right to "be placed in out-of-home care according to [the child or youth's] gender identity, regardless of the gender or sex listed in their court or child welfare records[; and] be provided appropriate

clothing that fits and corresponds to [the child or youth's] gender identity"; and

WHEREAS, The Family First Prevention and Services Act of the Bipartisan Budget Act of 2018 (Public Law No. 115-123) became federal law on February 9, 2018, steering the child welfare system towards much needed reform and re-calibration of policies to: "provide enhanced support to children and families and prevent foster care placements" and, if safety necessitates removal, provides children with loving foster homes rather than congregate care settings; address disparities known to child welfare experts, such as the overrepresentation of youth who are lesbian, gay, bisexual, transgender, or questioning in the child welfare system overall and the system overreliance on congregate care settings for these youth, which typically yield worse outcomes for them compared to their cisgender and heterosexual peers; recruit, retain, and support homes that are affirming of a youth-in-care's sexual orientations and gender identity and establish a system of accountability if homes are not providing affirming care; and, protect Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) youth from being unnecessarily diagnosed to meet clinical criteria required for residential care or from facing increased risk of involvement in the justice system as a result of the Family First Prevention and Services Act implementation; and

WHEREAS, The Children and Family Services Act (20 ILCS 505/5.25) requires the Department of Children and Family Services to provide every child in its care with "the necessary behavioral health services", including "behavioral health services from an outside provider when those services are necessary to meet the child's needs and the child wishes to receive them"; and

WHEREAS, The Department of Children and Family Services is required by the Children and Family Services Act (20 ILCS 505/7) to place children in its care in safe and adequate placements

consistent with each child's health, safety, and best interests;
and

WHEREAS, The Department of Children and Family Services has adopted rules, entitled "Placement Selection Criteria", (89 Ill. Adm. Code Part 301.60) that provide that "all placement decisions will be made consistent with the safety, best interests and special needs of the child" and that consideration shall be given to "the least restrictive setting appropriate for the child which most closely approximates a family"; and

WHEREAS, The Department of Children and Family Services is the party to a federal court consent decree (B.H. et al., 88 C 5599, N.D. ILL) that provides that Children shall: be free from foreseeable and preventable harm[;]...receive at least minimally adequate healthcare [including] mental health care adequate to address their serious mental health needs[;] be free from unreasonable and unnecessary intrusions by DCFS upon their emotional and psychological well-being" and that the Department shall maintain a system which provides: "that children will be timely and stably placed in safe and appropriate living arrangements[;]...for the prompt identification of the medical, mental health and developmental needs of children[;] timely access to adequate medical, mental and developmental services[; and] that children receive adequate services to assist in the transition to adulthood"; and

WHEREAS, The Illinois Human Rights Act (755 ILCS 5) protects against discrimination on the basis of sexual orientation and gender identity in places of public accommodation, including the Department of Children and Family Services and its contracted providers; and

WHEREAS, People who are Lesbian, Gay, Bisexual, Transgender, Questioning or Queer are subjected to violence and discrimination because of who they are or who they love; and

WHEREAS, Gender dysphoria is a serious and internationally recognized medical condition that requires immediate medical attention from a medical professional experienced in its treatment; and

WHEREAS, On May 11, 2017 the Department of Children and Family Services updated Appendix K to Procedures 302 "Support and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Children and Youth" (P.T. 2017.04) which, among other things: (1) recognizes that LGBTQ children/youth are at higher risk than their heterosexual cisgender counterparts for emotional and physical abuse from family members and/or peers, failed out-of-home placements, homelessness, emotional/physical victimization, and/or institutional neglect or abuse; (2) states DCFS' policy is to maintain and promote safe and affirming environments for LGBTQ children and youth; (3) applies to anybody in contact with children/youth in DCFS care (e.g., DCFS staff, employees of contractors, volunteers, foster parents, etc.); (4) prohibits caregivers from engaging in any discrimination against or mistreatment of LGBTQ children and youth; (5) requires caregivers to affirm and support an LGBTQ child/youth's sexual orientation and gender identity, including by: (a) using the child/youth's preferred name and gender pronouns (including gender-neutral pronouns, such as "they/them"), including in written documents and records when the youth agrees; (b) respecting the child/youth's choice of clothes, make-up, hairstyle, friends, and activities; and (c) providing support to LGBTQ youth who are experiencing problems related to their sexual orientation or gender identity in the community, including schools where transgender youth may need help requesting permission to use gendered facilities such as restrooms or locker rooms; (6) prohibits placing a child or youth in congregate care because of their sexual orientation or gender identity; (7) prohibits placing LGBTQ youth somewhere they will not be affirmed and requires immediate corrective action if a youth is not being affirmed; (8) provides that children/youth should generally be housed based on their gender identity, rather than their birth assigned gender, and a

child/youth's perception of where they should be placed and would feel safest should be the primary factor in informing housing decisions; (9) states that LGBTQ children and youth have the right to receive LGBTQ competent medical care and sexual health education, including continuation of hormone therapy for transgender youth who were receiving it before entering DCFS care, and that youth who request hormone therapy while in DCFS care (who were not receiving such care prior to entering DCFS custody) should be referred to medical professionals who are recognized as medically competent in the care of transgender youth; (10) requires caregivers to respect the privacy of a child/youth's sexual orientation and gender identity and not disclose this information without the child/youth's permission; and (11) mandates annual training in LGBTQ competent care for every person in contact with children/youth in DCFS care; and

WHEREAS, There has been little to no public information offered about the Department of Children and Family Services' implementation of Appendix K to Procedure 302, or whether there is any oversight process to ensure accountability and compliance with the requirements of Appendix K to Procedure 302 so that the needs of youth identifying as Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) are being addressed systematically by the Department of Children and Family Services and its contractors, or whether any efforts are having an impact on disparate outcomes, division of duties during staffing vacancies for allocated positions, or whether State resources are being sufficiently allocated and spent to properly implement Appendix K; and

WHEREAS, The General Assembly requires reliable information to guide funding decisions, perform its oversight capacity, and make sound legislative and administrative recommendations; therefore, be it

RESOLVED, BY THE SENATE OF THE ONE HUNDRED FIRST GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that the Auditor General is directed to conduct a performance audit of the Department of

Children and Family Services' compliance with its obligations to protect and affirm children and youth who are lesbian, gay, bisexual, transgender, questioning or queer; and be it further

RESOLVED, That the audit shall include, but not be limited to, examining the operations and management of the Department of Children and Family Services and its contractors to perform its duties in accordance with the Foster Children's Bill of Rights Act (20 ILCS 521/1) and Appendix K to Procedure 302 "Support and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Children and Youth" (P.T. 2017.04) as follows:

(1) The Department of Children and Family Services' implementation of and adherence to Appendix K to Procedure 302 and the Foster Children's Bill of Rights;

(2) The Department of Children and Family Services' contractors' implementation of and adherence to Appendix K of Procedure 302 and the Foster Children's Bill of Rights;

(3) How and with what frequency the Department of Children and Family Services and its contractors' employees are trained on sexual orientation, gender identity, and the requirements of Appendix K, and whether the training is sufficient to demonstrate appropriate application to fieldwork;

(4) How employee and contract oversight ensure accountability and corrective actions;

(5) The method by which the Department of Children and Family Services assesses, monitors, and acts to make certain its contracted providers have adopted LGBTQ-affirming, nondiscrimination policies that are at least as extensive as Appendix K, including policies providing for employee discipline up to and including termination and for conduct in violation of the non-discrimination policy;

(6) The methods by which information about youth gender-identity is sought, the format and locations in which this information is maintained, and the practices utilized for privacy protections;

(7) Actions taken by the Department of Children and Family Services and its contractors in licensing to require foster parents' commitment to provide care and homes that are affirming of all children and youth, regardless of sexual orientation or gender identity;

(8) The process by which the Department of Children and Family Services ensures that children or youth who identify as lesbian, gay, bisexual, transgender, questioning or queer are matched with placements that are affirming of those youths' sexual orientation and gender identity; and

(9) The current gap in placement and service capacity to meet needs and efforts made to recruit homes affirming of lesbian, gay, bisexual, transgender and questioning or queer children and youth; and be it further

RESOLVED, That the audit include, but not be limited to, the following determinations as they pertain to children (up to the age of 21) in the care of the Department of Children and Family Services in calendar years 2017 and 2018:

(1) Whether youth in care are made aware of their rights and know how to report violations of these rights, the experiences of youth who have reported violations, recommendations made by youth in care to improve their ability to meaningfully exercise their rights, and how the Department of Children and Family Services incorporates such recommendations in policy development;

(2) The number of youth in care identifying as (a) lesbian, (b) gay, (c) bisexual, (d) transgender, (e) questioning, (f) gender non-conforming, (g) another minority sexual orientation or gender identity, or (h) more than one of the aforementioned identifications during the review period;

(3) For each youth in subsection (2), the length of stay in out-of-home care, case permanency goals, frequency of sibling visitation, as applicable;

(4) For each youth in subsection (2), the number, type, and duration of each placement designated foster home, group home, residential treatment center, detention or correctional

setting, psychiatric hospital, transitional living program, or shelter home; whether and how the youth in care participated in placement planning and determination; whether and how gender identity was considered for placement selection and whether the youth was placed according to their gender identity (as opposed to their sex assigned at birth as reflected on their birth certificate); reasons for placement disruptions, if applicable;

(5) For each youth in subsection (2), the number of each incident categorized as running away, contact with police or the justice system, crisis hospitalization, hospitalization beyond medical necessity, reported victim of assault, school-related disciplinary infractions, school-related bullying or harassment, removal from a placement at the request of a provider or caregiver, removal from a placement at the request of the youth, subject of abuse or neglect allegations while in out-of-home care, detained in a correctional setting beyond release due to lack of identified placement;

(6) Whether the youth in subsection (2) were provided opportunities to engage in normalcy activities (e.g., participation in activities typical of their peer and age group) consistent with their gender identity;

(7) Whether the data findings for subsections (1), (3), (4), (5), (6) differ from that of the general population of youth in care or whether the data differs based on the geographic placement of the youth in care;

(8) The number of providers designated as clinically appropriate to provide housing or services to youth who identify as lesbian, gay, bisexual, transgender, or questioning available to youth in care and the number of youth utilizing those providers for services or supports;

(9) The number of transgender youth in care who have requested (whether formally or informally) transition-related hormone therapy or consultation services regarding this treatment; the number of youth the Department of Children and Family Services did not refer for treatment, the qualifications of staff making the determination, and

justification; the number of youth who received their requested care and whether this was delivered by a qualified provider; and the length of time from the youth's request to a service referral being made to referral resulting in service delivery; and information regarding barriers to service access, bureaucratic hierarchy and hurdles, and efforts made to address these issues; and

(10) The number of youth in care in need of treatment for gender dysphoria and how this need is identified; the number of youth the Department of Children and Family Services did not refer for treatment, the qualifications of staff making the determination, and justification; the number of youth receiving this care and whether it was provided by a qualified clinician; the length of time from need being identified to service referral being made to referral resulting in service delivery; and information regarding barriers to service access, bureaucratic hierarchy and hurdles, and efforts made to address these issues; and be it further

RESOLVED, That the Department of Children and Family Services shall cooperate fully and promptly with the Auditor General's Office in conducting this audit; and be it further

RESOLVED, That the Auditor General commence this audit as soon as possible and distribute the report upon completion in accordance with Section 3-14 of the Illinois State Auditing Act.

Adopted by the Senate, May 31, 2019.



Secretary of the Senate



President of the Senate