

SOGIE Confidentiality Form Guide

Intended for: Child Welfare Program Managers, Supervisors, SSS1s, Family Time Coordinators, OTIS staff, office staff and Paralegals who interact with children, families, and handle discovery tasks. This document provides information for how to utilize the SOGIE Confidentiality form, when it should be utilized, who should be consulted and where to store the document.

Purpose of SOGIE Confidentiality Form: The purpose of the SOGIE Confidentiality form is to document when a child makes a statement of SOGIE, to document consent, and to document any exceptions to share SOGIE without consent. It will also be utilized by office staff and paralegal staff who complete discovery and disclosure of Child Welfare records.

What is SOGIE?

SOGIE is the acronym for Sexual Orientation, Gender Intity or Gender Expression. *Sexual orientation* and *gender identity* are legally defined terms in Oregon that predate Senate Bill 209. Both are defined in Oregon Revised Statutes (ORS) Chapter 174.100 Construction of Statutes: General Definitions:

- *“Gender identity” means an individual’s gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.*
- *“Sexual orientation” means an individual’s actual or perceived heterosexuality, homosexuality or bisexuality.*

Although “gender expression” is not defined in statute, ODHS has defined that term in its administrative rules, OAR 413-010-0000, which states:

- *“Gender expression” means the manner in which a person expresses gender through clothing, appearance, behavior, speech, etc. Gender expression is distinct from sexual orientation and gender identity.*

What is Senate Bill 209?

In the 2023 Legislative session, Oregon Department of Human Services, ODHS Child Welfare was granted the ability to further protect a child’s statement about their sexual orientation, gender identity or gender expression (SOGIE) from discovery or disclosure, absent specified exceptions.

What is the intended purpose of SB 209?

Children in ODHS’ care needed enhanced assurance that their statements about their SOGIE will be protected, even in the courtroom, whenever possible. ODHS is required to release confidential Child Welfare records under certain circumstances under ORS 409.225, including, but not limited to, discovery in juvenile dependency or termination of parental rights proceedings. ODHS sought a change to the law under Senate Bill 209 which to protect the

disclosure of a child's statements related to their SOGIE for discovery or in response to a subpoena served on or a records request made to ODHS. *Note, if a record of a child's SOGIE statement is responsive to a court order, that record must be disclosed despite Senate Bill 209 and consistent with the order.*

When do I use the SOGIE Confidentiality Form?

The confidentiality form should be utilized when a child makes a SOGIE statement about themselves. The confidentiality form is meant to capture information about a child's SOGIE statement when a SOGIE statement has been made specifically by a child. Senate Bill 209 legislation does not require that SOGIE information is documented for all children but only those who share statements of SOGIE information. **There is no new requirement to ask children about their SOGIE information**, but the confidentiality form should be used if a statement of SOGIE is made by a child or a record of a child's SOGIE statement has been shared.

Completion of the SOGIE confidentiality form indicates:

- A SOGIE statement has been made by a child,
- A conversation with the child has occurred,
- Consent was gained from the child or the child's attorney or;
- An exception has been utilized.

Who completes the SOGIE Confidentiality Form?

The assigned caseworker should complete the SOGIE confidentiality form. If you are not the assigned caseworker and a child shares a SOGIE statement with you, or you identify a record of the child's SOGIE statement that was not produced by the caseworker, please notify the caseworker so they are able to engage with the child, learn about their needs and complete the SOGIE confidentiality form.

Are names or preferred names considered SOGIE information?

It depends. Preferred names, without a SOGIE statement that includes a preferred name may not be considered SOGIE information. Also, preferred names could be nicknames or names that resonate for the child and if they are not in relation to a child's SOGIE statement will not be protected. If a child is using a preferred name and this is connected to their SOGIE information or statement, please include it on the SOGIE Confidentiality Form and in the narrative section of the form.

What age can a child consent to release of their SOGIE information?

A child can consent independently at age 14+ without a documented intellectual or developmental disability that limits or is believed to limit the child's capacity to consent.

When can an attorney assist with consent?

The child's attorney may consent on the child's behalf if they are age 13 or younger or have an intellectual/developmental disability that impairs their capacity to consent.

- A conversation with the child and/or the child’s attorney should occur to determine if consent can be gained to release SOGIE information.
- Notifying the child’s attorney regarding consent or exceptions should also occur once an exception has been utilized or to ask the attorney to assist with consent.

When should an exception be utilized?

While the goal is to obtain consent from the child and/or their attorney, there may be certain circumstances where a child or their attorney does not consent to disclosure of the child’s SOGIE record and ODHS determines that disclosure of the information is necessary. Under SB 209, ODHS may disclose a child’s SOGIE record without consent if ODHS determines, in writing, that either:

- Failure to disclose the statement/record is reasonably likely to jeopardize the child’s safety or well-being; or
- Disclosure of the record is necessary to provide services to the child or the child’s family.

What is “best practice” when utilizing an exception?

When utilizing an exception, it is important to focus on the justification to release the information. The form asks specifically to describe justification for disclosure (e.g., how would failure to disclose jeopardize the child’s safety or well-being or how is it necessary for service provision). It is helpful to be as descriptive as possible when describing the justification. Providing background on how the child’s well-being, safety or need for services will be impacted without disclosure of SOGIE information.

It is also important to state whom this information will be shared with and why. For example, when a child needs a BRS placement, an exception may be utilized because consent can’t be gained from the child or attorney in a timely manner. Thus, an exception is needed to provide SOGIE information to potential treatment providers to ensure that a child’s safety, service, and well-being needs are met.

Who can approve the use of an exception?

A supervisor signature is required for the use of one of the exceptions to be utilized. Electronic signatures can be provided as approval.

What if obtaining consent is not possible or it is unclear if an exception is appropriate?

In instances where there are complexities in a case, consulting with a program consultant as well as your assigned AAG may help to determine what steps are needed.

Where can I find the SOGIE Confidentiality Form?

A draft version of the form to capture SOGIE confidentiality, consent, exceptions, and child statements is now available for use. The final SOGIE Confidentiality form is in process of being

added to the forms server, but a draft version can be accessed now on the OWL page here: [SOGIE Confidentiality](#).

Where do I store the SOGIE Confidentiality Form when it is completed?

The completed SOGIE Confidentiality Form should be uploaded into the filing cabinet in OR-Kids. When uploading the SOGIE confidentiality form into OR Kids, select the **'Legal'** category with document type of **'other'** and use the naming convention **"YYYY.MM.DD.SOGIE Confidentiality Form"**.

In the coming months, a specific section of the filing cabinet will become available to support this process.

How often does the SOGIE Confidentiality Form need to be updated?

It depends on the specifics of the case. The SOGIE Confidentiality form typically will not need to be updated unless a child's SOGIE statement, consent or exceptions have changed. If a child's SOGIE statement, consent needs or exceptions change, a new form may need to be completed with updated information. There could be an exception to this based on the specific facts and circumstances of a particular situation, and in consultation with a permanency consultant and/or assigned AAG. For instance, if a child is making different SOGIE statements on a daily or weekly basis, the worker might be able to have a conversation with the child and their attorney about the fluidity of those statements and the option of consenting more generally to sharing the child's different statements based on that fluidity.

Who can I reach out to for general questions related to SOGIE confidentiality or consultation?

Heather Collee, a statewide equity, and ADA coordinator can help with questions regarding how to have a conversation with a child regarding their SOGIE statement, consent, and exceptions. Heather Collee can be contacted at: heather.collee@odhs.oregon.gov. You can also reach out to one of your regional program consultants to assist if there are questions.

Will there be more information provided regarding SOGIE confidentiality and Senate Bill 209?

Yes, in the coming months training will be provided to support the SOGIE confidentiality process as well as engaging in conversations with children about this topic.