

Senate Bill 209 – Frequently Asked Questions

Purpose

All children deserve to feel physically and emotionally safe. When children enter foster care, it is the responsibility of the state to ensure that safety. One way that Oregon Department of Human Services (ODHS) supports safety is by gathering accurate information about the sexual orientation and gender identity/expression ([SOGIE](#)) of children in foster care. This information allows us to coordinate appropriate services and secure affirming placements for children who identify as [LGBTQIA2S+](#). But the possibility of disclosure may undermine a child's sense of safety and prevent them from sharing their [SOGIE](#) information with ODHS. This can prevent the collection of accurate information and limits our ability to provide [LGBTQIA2S+](#) children with some of the critical supports they need while in care.

Children in ODHS' care needed enhanced assurance that their statements about their [SOGIE](#) information will be protected, even in the courtroom, whenever possible. ODHS sought a change to the law under [Senate Bill 209](#) which allows such information to be kept confidential and not subject to ODHS' discovery obligations in juvenile dependency or termination of parental rights proceedings, absent certain exceptions. The law also protects the disclosure a child's statements related to their [SOGIE](#) in response to a subpoena served on or a records request made to ODHS, again subject to certain exceptions. *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.*

Q. What is SOGIE?

[SOGIE](#) is the acronym for sexual orientation and gender identity/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 intends to adopt the use of the following definition from OYA ([OAR 413-435-0020](#)):

- *“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.*

Q. What is a SOGIE record?

Under [Senate Bill 209](#) a “record of sexual orientation, gender identity or gender expression means a written or recorded statement made by a child, memoranda of an oral statement made by a child or any other documentation in a child’s child welfare records of the child’s statement, if the statement concerns the child’s sexual orientation, gender expression or gender identity.”

Q. If Senate Bill 209 prohibits disclosure of a child's statements about their SOGIE unless an exception applies. What are those exceptions?

- ODHS determines, in writing, that failure to disclose the records is reasonably likely to jeopardize the child’s safety or well-being.
- ODHS determines, in writing, that disclosure is necessary to provide services to the child or the child’s family.
- The child (age 14+ without an intellectual/developmental disability) or the child’s (age 13 or younger or those with an intellectual/developmental disability) attorney consents to the disclosure.

Q. How does this bill further protect the confidentiality of a child’s statements about their SOGIE?

A child’s statements about their [SOGIE](#) are documented in Child Welfare records that are confidential under multiple state and federal confidentiality laws. [Senate Bill 209](#) provides a further layer of protection for this information as it provides an explicit exemption from disclosure of this information, absent specified exceptions.

For example, while ODHS is generally prohibited from disclosing or using the contents of any child welfare records, files, papers, or communications that contain information about a child, family, or other recipient of services, disclosure is required or authorized depending on the circumstances as set out in ORS 409.225. Such disclosures could include the child's [SOGIE](#) statements that [Senate Bill 209](#) seeks to protect. Under [Senate Bill 209](#), a child's statements about their [SOGIE](#) will be exempt from disclosure even if there is an otherwise required or authorized disclosure of child welfare records, unless one of the enumerated exceptions apply.

Q. Can I still use SOGIE information in my work with children and families?

It depends. This legislation primarily applies to disclosing a record of [SOGIE](#) as defined above outside of ODHS Child Welfare to:

- External system partners (e.g., schools, service providers, etc.),
- The parties to a dependency case or to the court in a dependency case,
- Requestors of information, or
- Those who would normally receive or be entitled to Child Abuse Assessment records and other Child Welfare records.

It does not in any way prohibit the collection, use or disclosure of [SOGIE](#) information for your work within the programs at ODHS Child Welfare. [SOGIE](#) information should continue to be collected, documented, and used to coordinate appropriate services and secure affirming placements for children who identify as [LGBTQIA2S+](#) but with [Senate Bill 209](#) there will be a new process for determining and documenting any written or verbal disclosure of a child's statements about their [SOGIE](#).

Additionally, there may be instances when coordination of appropriate services may require the need to disclose information. This legislation does not prohibit disclosure necessary to provide services to the child or the child's family but will require a new process with additional considerations and written findings before any disclosures can be made.

Q. What if I believe there is a reason to disclose the information to the court?

There may be instances in which it may be appropriate for the department to disclose [SOGIE](#) information (again, a child's statements about their [SOGIE](#)) to the court. The first and best option is to do this through consultation with the child and the child's attorney to obtain the child's consent prior to disclosing information to the court and parties. Remember that anything that is shared with the court **MUST** also be shared with all the parties. Please consult your AAG if a child has asked that one legal party know their [SOGIE](#) information and not another. If a child is 14 or older, they can consent, with notification to their attorney, to the disclosure of their [SOGIE](#) information to the court and the parties to the dependency case. If the child is 13 or younger, consult with their dependency attorney to determine whether consent can be obtained.

As discussed above, regardless of age, if a child does not consent to the disclosure of their record of [SOGIE](#), ODHS still has discretion to disclose if ODHS determines in written findings that: (1) failure to disclose would be reasonably likely to jeopardize the child's safety or well-being or (2) the disclosure is necessary to provide services to the child or the child's family. [Senate Bill 209](#) requires the child's consent, if any, to be documented and if there is no consent, the bill requires documentation of your decision about whether one of the other exceptions applies and the rationale for the decision.

Q. What if the child or the child's attorney, depending on their age, discloses the child's SOGIE information?

Under [Senate Bill 209](#) the child or the child's attorney may consent to disclosure, depending on the age of the child. If they have done so, this information may not need to be kept confidential and may be disclosed to the court, other legal parties to the dependency case, or other specified individuals, agencies, or organizations, depending on the scope of the consent.

Additional guidance on securing and documenting consent of the child to disclose their [SOGIE](#) information will be provided in the coming months.