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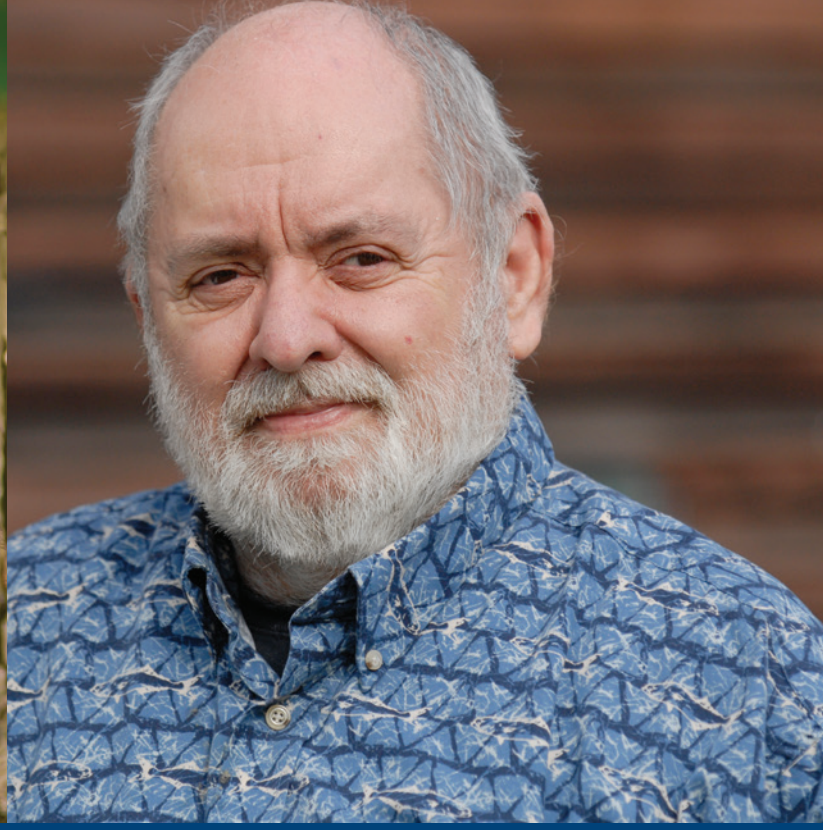

TRANSGENDER RIGHTS TOOLKIT

A LEGAL GUIDE FOR TRANS PEOPLE AND THEIR ADVOCATES

Lambda Legal
making the case for equality

Within this Transgender Rights Toolkit, readers will find answers to many questions that transgender people and their advocates may ask as they navigate through life. This toolkit is meant to be a resource and advocacy tool designed to educate and empower a community often left outside the walls of power.

While transgender people are gaining visibility in the media, the daily lived experiences of transgender people is fraught with discrimination and oppression. They live and work in a world not suited to meet their basic needs. Through education, advocacy and litigation, Lambda Legal's Transgender Rights Project has been able to ease, overcome and combat the pervasive discrimination that transgender people face.

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This toolkit can be downloaded for free at: lambdalegal.org/publications/toolkits

WHO'S ON THE COVER?

Donisha McShan featured in **TRANSGENDER INCARCERATED PEOPLE IN CRISIS**

Vandy Beth Glenn featured in **WORKPLACE RIGHTS & WRONGS**

Nakoa Nelson and Barbara Riley featured in **OVERCOMING HEALTHCARE DISCRIMINATION**

Jude Patton featured in **TRANS AGING WE'RE STILL HERE!**

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CHAPTER I

Fighting Anti-Trans Violence

Violence is a plague in the lives of many transgender and gender-nonconforming (TGNC) people, with hate-motivated beatings and murders very common and often involving extra cruelty. According to the National Coalition of Anti-Violence Programs, 72% of reported hate murders against LGBT people and people living with HIV in 2013 were committed against transgender women, with 67% against transgender women of color. This terror-by-example creates the kind of fear that sends people underground, away from community services and support.

Call the cops? Police often participate in the intimidation themselves rather than providing protection. They often use abusive language, humiliate TGNC people and are widely responsible for injuries during custody and on routine patrols. In 2012, Lambda Legal's national survey on police misconduct, *Protected and Served?*, found that 32% of TGNC respondents reported that police officers' attitudes toward them had been hostile. Additionally, the National Coalition of Anti-Violence Programs found in 2013 that transgender people were 3.7 times more likely to experience police violence than the general population.

In recent years, the rash of murders has prompted an outcry. Since 1998, November 20th has been marked annually around the world as Transgender Day of Remembrance. Following years of grassroots campaigning, a U.S. federal hate crimes law now covers TGNC victims. And protests against police brutality are beginning to bring changes in a few major American cities.

Nonetheless, there are continued reports about TGNC people being degraded, physically assaulted or sexually abused while under arrest. These harken back to one of the first and most high-profile campaigns to hold police accountable for anti-transgender violence: the murder case of transgender teen Brandon Teena. In 2001, the Nebraska Supreme Court held a local sheriff liable for both his own abusive treatment of Teena and his failure to protect him from murder after his rapists threatened his life. (Lambda Legal argued the case on appeal.)

This fact sheet describes current battles against anti-TGNC violence and mentions a variety of ways to connect with advocates and services, whether participating in community events; helping establish TGNC-friendly police policies; or reaching out for legal advice or support through Lambda Legal's Help Desk at 866-542-8336 or www.lambdalegal.org/help.

MY STORY HERE'S WHAT I'VE LEARNED ABOUT THE POLICE

LOURDES ASHLEY HUNTER

"I've always identified as gender-nonconforming. Luckily, I've always been accepted by my family and friends, but that's not the case for everyone.

"The police profile transgender individuals a lot. They think that we're all sex workers. There are cases where they harass people, disrespect them and take away their humanity. Sexual assault cases are not uncommon. They also use inappropriate pronouns, offensive language and pejorative terms.

"I've worked with the police in my capacity as a community organizer for over 20 years and my advice is: Know your rights. In New York City, for instance, you have the right not to be discriminated against for your gender identity and to be addressed by your appropriate pronoun.

"Never argue with the police. Defend yourself by knowing the law."

FAQ

Answers to Common Questions about Anti-Transgender Violence

Q: Sometimes when I'm out with friends, a police officer stops to harass me on the sidewalk, assuming I'm a sex worker. What should I do?

A: Your first step should be to get as much information as possible about the officer involved: badge number, precinct number, name, description, time of day and location. Police are required to provide their badge number and names—although make sure that you are not putting yourself in danger by collecting the information. If you are questioned by the police, ask if you are free to go. If they say you are, calmly walk away.

If you are harassed by police, it's a good idea to contact a community-based organization that works on issues of police and institutional violence such as the New York City-based Anti-Violence Project (AVP) (avp.org or 212-714-1141) or another group under the umbrella of the National Coalition of Anti-Violence Projects (NCAVP) (ncavp.org or 212-714-1184 or info@ncavp.org). These groups can advise you on where to turn not just for legal advice but for support of other kinds.

You can also contact your local police department's Civilian Complaint Review Board (CCRB) or Internal Affairs Bureau (IAB). Reporting the incident is very important for building an accurate measure of the problem overall.

Police harassment and outright brutality against transgender people are very common: Twenty-two percent of the 6,450 transgender and gender-nonconforming respondents in the 2011 National Transgender Discrimination Survey (NTDS) who had interacted with police reported being harassed by them (the rate was much higher for transgender people of color). And almost one out of two respondents said they were uncomfortable about seeking help from police. In 2012, a separate survey among 220 transgender Latinas in Los Angeles found that two out of three respondents reported verbal harassment by police and one out of four reported sexual assault.

Q: What is being done to combat police mistreatment of transgender people?

A: Lawsuits in several U.S. cities have been resolved successfully in many incidents involving police strip-searching, groping, false arrests and chaining transgender people on handrails in "fish tank" fashion rather than placing them in cells. Meanwhile, advocates have been working with police to implement guidelines requiring respectful treatment of transgender people on patrol and in custody. Lambda Legal filed a friend-of-the-court brief on behalf of Patti Hammond Shaw, a trans woman who was held in men's detention areas while in the custody of the Washington, DC Metropolitan Police Department and United States Marshals Service. The MPD refused to recognize the "F" on her ID and instead went by her former database records. The case was resolved through an undisclosed monetary settlement and the MPD has agreed to change its classification policy so that transgender detainees will be classified based on the gender listed on their ID, if they so wish.

There have also been significant policy improvements in Atlanta, Georgia; Cicero, Illinois; Denver, Colorado; Los Angeles; New York City; Portland, Oregon; San Francisco; and Washington, DC. In June 2013, the New York City Council passed two important bills—the End of Discriminatory Profiling Bill and the NYPD Oversight Bill—by a veto-proof majority. The End of Discriminatory Profiling Bill enforces a strong ban on profiling based on gender identity or expression and sexual orientation, among many other factors. Similar laws exist in Illinois, West Virginia and Arkansas. The NYPD Oversight Bill establishes independent oversight of the NYPD to match oversight of the FBI, CIA and LAPD, in addition to every major New York City agency.

In April 2012, The Los Angeles Police Department issued a new policy on treatment of transgender incarcerated people intended to "prevent discrimination and conflict." Among the guidelines is this instruction:

"Treat transgender persons in a manner that reveals respect for the individual's gender identity and gender expression, which includes addressing them by their preferred name and using gender pronouns appropriate to the individual's gender self-identity and expression."

In addition, the 2003 Prison Rape Elimination Act (implemented in 2012), is a federal law which states that consideration for someone's gender identity and safety must be taken into account when the person is searched or housed in custody. (Please see our "Transgender Incarcerated People in Crisis" fact sheet, downloadable here: lambdalegal.org/publications/toolkits.)

Q: What does it mean that anti-transgender violence is now a hate crime in the United States?

A: A hate crime is a violent act motivated by bias. The idea behind hate crime law is that such acts don't just affect the individual victim but also serve to intimidate an entire group

DEFINITIONS

Transgender refers to people whose gender identity, one's inner sense of being male, female or something else, differs from their assigned or presumed sex at birth; ***cisgender*** refers to people whose gender identity is the same as their assigned or presumed sex at birth.

Gender-nonconforming people don't meet society's expectations of gender roles.

> **Never argue with the police. Defend yourself by knowing the law.**
>
> **—LOURDES ASHLEY HUNTER**

of people—and therefore demand greater punishment than other crimes. Also, it takes much longer for victims to recover mentally from a hate crime, according to the American Psychological Association.

In 2009, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act was signed into law. It expanded the 1969 Federal Hate Crimes Law to include crimes motivated by a victim's actual or perceived gender, sexual orientation or gender identity.

The Hate Crimes Prevention Act was historic because it extended the first-ever explicit federal protections to transgender people. Also, by requiring the government to provide grants and assistance to state and local authorities investigating and prosecuting hate crimes, it is intended to have the most practical effects possible.

On March 13, 2013, President Obama signed the reauthorized Violence Against Women Act (VAWA) into law, which for the first time prohibited any program funded by VAWA from discriminating against people due to gender identity or sexual orientation. The VAWA also explicitly named LGBTQ communities as underserved populations.

Q: Why is suicide so common among transgender people?
A: Trans people face hostility and discrimination with such frequency and in so many aspects of life that it is easy to turn that hatred inward. Forty-one percent of NTSD respondents said they'd attempted suicide (compared to just 1.6% of the general population).

Health care failures contribute to this problem—whether that means being unable to see an accepting and knowledgeable

(continued on back cover)

41% The percentage who said they had attempted suicide among 6,450 transgender and gender-nonconforming respondents to the 2011 National Transgender Discrimination Survey, compared to 1.6% of the general population.

TRANSGENDER PRIDE

VISIBILITY IS KEY

Transgender rights are LGBT rights, but sidelining of transgender issues and people has always been a problem in the LGB movement, even when they're at the very center of what's going on, such as during the 1969 Stonewall riots. Since 2003, there has been a movement to supplement LGBT Pride marches with trans-focused events, including the massive Trans March in San Francisco every year. The upbeat emphasis on visibility and pride also balances the mourning theme of Transgender Day of Remembrance (see below).

The activist side of Transgender Pride has exploded into a separate Transgender Day Of Action in recent years. Organized by New York City's TransJustice, part of the Audre Lorde Project, to call attention to hate crimes, biased policing and the intersection of racism and transphobia, the Day of Action has lately spread to Washington, DC and other cities.

PUERTO RICO MURDERS

ANTI-TRANS ATTACKS AND POLICE MISCONDUCT

The Civil Rights Commission of Puerto Rico recorded 17 instances of hate-motivated violence against LGBT individuals in 2013, and alarmingly, more than half of the survivors (52.94%) were trans women.

In Puerto Rico, state agencies continue to resist handling police complaints in cases of assault and violent acts as hate crimes, and instead investigate them as misdemeanors, even in cases that were evidently motivated by prejudice. The authorities' refusal to deploy the U.S. Commonwealth's 2002 hate crimes law in such cases has been infuriating for those seeking justice.

TRANS DAY OF REMEMBRANCE

RAGE AND SADNESS EVERY YEAR

Every November 20th, communities around the world mark Transgender Day of Remembrance (TDoR) to honor those killed in the previous year due to anti-transgender prejudice: Often the event is marked by candlelight vigils, a recitation of names and a peaceful public march of some kind. The Day (and the Transgender Awareness Week leading up to it) is in November because it was Rita Hester's November 28th, 1998 murder that inspired the "Remembering Our Dead" web project and a San Francisco candlelight vigil in 1999. Hester's murder—like most anti-transgender murder cases—has yet to be solved.

In 2014, Lambda Legal marched in solidarity at Chicago's TDoR March, tabled at the 6th annual Transgender Symposium and Observance of the Transgender Day of Remembrance in Rutgers and hosted a screening of "Black Is Blue," a short film about a black transgender security guard.

doctor when ill; having no access to safe and affordable transition-related health care (such as hormone treatments or gender-affirming surgery); or despairing about these or other issues without basic psychological support. Research has shown a link between lack of health care coverage and the high suicide rate. The rate among subjects in a 2006 study dropped from 29.3 to 5.1 percent when they were given access to transition-related treatment. (Please see our "Transition-Related Health Care" fact sheet, downloadable here: lambdalegal.org/publications/toolkits.)

Discriminatory health care and insurance policies persist despite medical consensus of the "efficacy, benefit and medical necessity" of transition-related surgery and other treatment, as the American Psychological Association stated in a 2008 statement. (For a list of similar resolutions, see: lambdalegal.org/publications/fs_professional-org-statements-supporting-trans-health.)

Meanwhile, transgender people are very often poor and face double the rate of unemployment. This can make for considerable stress and contribute to suicide risk. Respondents to the NTDS were nearly four times more likely to have a total household income lower than $10,000 per year compared to the general population. (Please see our "Workplace Rights & Wrongs" fact sheet, downloadable here lambdalegal.org/publications/toolkits.)

If you or someone you know is at risk for suicide, there is support out there. The Trevor Project provides a suicide hotline for LGBT youth at 866-488-7386; or call 1-800-suicide, which serves the general population.

Q: What is being done about anti-TGNC bullying in schools?

A: Unfortunately, even TGNC young people are the targets of harassment. Bullying is an especially widespread problem: Seventy-eight percent of NTDS respondents who had expressed a transgender identity or gender-nonconformity while in grades K-12 reported being harassed; 35% attacked; and 12% sexually assaulted.

Forty-nine states now require that schools have policies against discrimination and bullying, although only a third of those explicitly mention gender identity and/or expression. In October 2010, the Department of Education issued a guidance that explained educators' legal obligations to protect students from student-on-student racial and national origin harassment, sexual and gender-based harassment, and disability harassment, including gender and sexual harassment of LGBT individuals. Additionally, in April 2012, the Obama Administration voiced its support for the proposed Student Non-Discrimination Act (SNDA) and the Safe Schools Improvement Act (SSIA), which would put some federal muscle into the fight against bullying.

If you are bullied at school, check out the Know Your Rights for Teens and Young Adults section of Lambda Legal's website (http://www.lambdalegal.org/know-your-rights/youth) and Lambda Legal's "What to Do if You're Bullied," in *Out, Safe & Respected*, which is available here: http://www.lambdalegal.org/publications/out-safe-respected. If you're bullied in out-of-home care, also check out Know Your Rights for Teens and Young Adults: http://www.lambdalegal.org/know-your-rights/youth

Also see Lambda Legal's *Bending the Mold* at lambdalegal.org/publications/bending-the-mold and "Survival Tips for Trans Youth" at lambdalegal.org/publications/toolkits. And see the *Model District Policy for Transgender and Gender Nonconforming Students* created in 2011 by the Gay, Lesbian and Straight Education Network (GLSEN) and downloadable here: glsen.org/article/transgender-model-district-policy.

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to ***www.lambdalegal.org/help***.

Resources

HATE CRIMES & POLICE MISCONDUCT

If you have faced or witnessed anti-transgender violence, there is help! Call the police. Contact Lambda Legal's Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help.

Also reach out to organizations that deal specifically with problems of violence, such as:

ANTI-VIOLENCE PROJECT (AVP)
The New York City-based AVP (www.avp.org or 212-714-1141) works to empower lesbian, gay, bisexual, transgender, queer and HIV-affected communities and allies to end all forms of violence through organizing and education, and supports survivors through counseling and advocacy.

The National Coalition of Anti-Violence Projects (NCAVP) (www.ncavp.org or 212-714-1184 or info@ncavp.org) is a coalition of 20 community-based LGBTQH anti-violence organizations.

SUICIDE

1-800-suicide This round-the-clock hotline serves the general population.

Trans Lifeline (1-877-565-8860 and translifeline.org) is a nonprofit hotline staffed by transgender people for transgender people currently experiencing a crisis.

The Trevor Project (866-488-7386 and www.thetrevorproject.org) provides crisis intervention and suicide prevention services to LGBTQ youth.

Photo of Lourdes Ashley Hunter © Amos Mac

CHAPTER II

Transgender Incarcerated People in Crisis

Nearly one in six transgender Americans—and one in two black transgender people—has been to prison.[1] Once behind bars, discriminatory policies and the constant threat of sexual assault can make prison a living hell for this already mistreated group. Lambda Legal documented the unique dangers faced by transgender incarcerated people through a 2012 survey called *Protected and Served?*, now available at www.lambdalegal.org/protected-and-served-jails-and-prisons.

The transgender prison crisis is part of a larger pattern of violence and discrimination in U.S. society that disproportionately affects people of color, poor people and transgender and gender-nonconforming (TGNC) people. "Over-policing and profiling of low-income people and of trans and gender-nonconforming people intersect," as the Sylvia Rivera Law Project (SRLP) describes it, "producing a far higher risk than average of imprisonment, police harassment and violence for low-income trans people."

Violence against TGNC people tends to be worse in places that are separated by sex such as county jails, immigration facilities and prisons. In the United States, transgender incarcerated people are still usually housed according to the sex assigned at birth, instead of by gender identity—one's inner sense of being male, female or something else. This policy makes transgender people more vulnerable to harassment or attack by staff or fellow incarcerated people: A California study found that transgender people were 13 times more likely to be sexually assaulted than non-transgender people in prison.[2]

U.S. prison officials also commonly block the access of incarcerated people to transition-related health care such as hormone therapy or gender-affirming surgery, even when it's prescribed as medically necessary by a doctor.

The TGNC prison crisis has been attracting public concern thanks to the continued efforts of organizations such as SRLP and Transgender Gender Variant Intersex Justice (TGIJP). The result has been a series of major policy shifts and important legal precedents.

Among these is the federal Prison Rape Elimination Act (PREA), passed unanimously in 2003, which in 2012 established long-demanded national standards for preventing, detecting and reporting prison rape. A new federal policy on transgender health care (see "Health Care" sidebar) is now in effect as well. In the courts, incarcerated people have repeatedly found recourse since the 1994 Supreme Court decision *Farmer v. Brennan*,[3] which provides precedent for transgender people to argue that the failure to protect them from sexual abuse and other violence, and the failure to provide transition-related health care is cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution.

These promising legal developments don't change the fact that conditions for TGNC people behind bars remain discriminatory and dangerous. While PREA carries potential financial penalties for prison systems that do not comply, it does allow incarcerated people to file a lawsuit in court for violations of its provisions. Enforcement and education are an uphill climb.

1. See National Gay and Lesbian Task Force and National Center for Transgender Equality's "National Transgender Discrimination Survey" (2011): http://www.endtransdiscrimination.org/Force. **2.** "Transgender Inmates in California's Prisons: An Empirical Study of a Vulnerable Population," Valerie Jenness, et al (2009): http://nicic.gov/Library/023832 **3.** *Farmer v. Brennan*, 511 U.S. 825 (1994).

MY STORY HARASSED AT MY HALFWAY HOUSE

DONISHA MCSHAN

"When I was paroled to The H Group, a halfway house in Marion, Illinois, to receive substance abuse treatment, I was excited about the opportunity to focus on my rehabilitation.

"But I was told by the staff members that I was a man, and that if I didn't stop acting like a woman, I would be sent back to jail. They addressed me with male pronouns and titles, forced me to sleep in a room with four men, even though I didn't feel safe, and periodically raided my belongings and confiscated anything they viewed as remotely feminine. They took my makeup, clothing, pedicure kit, magazines and curlers. They even took my pink shower cap.

"I filed a formal grievance with The H Group about the way I was being treated, and then Lambda Legal sent a letter. Four days later, I received a formal apology from the director of the facility. I felt proud and grateful. My personal items were returned and staff started treating me as a woman. I found for the first time that I was able to concentrate on treating my substance abuse and preparing for my release."

FAQ

Answers to Common Questions about Mistreatment of TGNC Incarcerated People

Q: How can I protest prison mistreatment?
A: Get a copy of your facility's grievance system procedures and file a grievance **right away**. It is important that you "exhaust your administrative remedies" as soon as possible by filing grievances that put your facility on notice that you believe your rights have been violated. The grievance procedures are specific to each facility and sometimes deadlines are very short.

Under the Prison Litigation Reform Act (PLRA), a federal law passed in 1996, people in custody who wish to file a lawsuit in federal court must *first* exhaust all of the administrative remedies available to them. Failing to do so gives a correctional facility a reason to ask a court to throw out such a case. If you do not file a grievance within the time period provided and pursue it through every level of appeal, it is likely that any lawsuit you bring will be dismissed.

To exhaust your administrative remedies at the federal level, the Bureau of Prisons (BOP) requires that you:

1. file a "request for an administrative remedy" with your institution within 20 days of the violation of your rights;
2. appeal any decision that you do not like to a regional office within 20 days;
3. appeal the decision with 30 days.

There are very few exceptions to the exhaustion requirement, but the Prison Rape Elimination Act (see below for more about the PREA) provides for one: If you have been sexually assaulted, you may still file a grievance related to the sexual abuse even if the deadline to do so has otherwise passed.

For more details about the PLRA and how to file a lawsuit in federal court, see the *Jailhouse Lawyer's Manual* at http://blogs2.law.columbia.edu/jlm/.

Q: What protects transgender people from violence and sexual assault in prison?
A: The federal Prison Rape Elimination Act (PREA) requires prisons, jails, community confinement facilities and immigration detention facilities to comply with standards to protect vulnerable people from sexual abuse. For example, these facilities must have a written policy mandating "zero tolerance" toward all forms of sexual abuse and sexual harassment; screen incarcerated people for vulnerability and separate them from likely abusers; proactively investigate all complaints; and train guards and other staff about issues specific to transgender people (see "Prison Guards" sidebar, opposite page). While PREA carries financial penalties for noncompliance, it does not allow individuals to file a lawsuit in court if it is violated.

Individuals may, however, file a lawsuit in court based on a violation of the Eighth Amendment, after exhausting administrative remedies (see above). The Supreme Court set the standard for this in *Farmer v. Brennan*, which involved a transgender woman named Dee Farmer who was repeatedly beaten and raped by other people in a men's prison. The Court found that prison officials were responsible because they knew about the attacks on Farmer and did nothing. Courts have repeatedly cited the Eighth Amendment's prohibition of "cruel and unusual punishment" in holding prison officials responsible for such violence. Incarcerated individuals may also be able to file a lawsuit based on violation of state law.

Q: Are transgender incarcerated people guaranteed access to health care?
A: Transgender people have struggled to access medically necessary care for years and have suffered a great deal because of bias and misunderstanding. U.S. courts have begun to recognize the health needs of transgender people, with several recent prison-related victories putting the issue in the spotlight. All seven Circuit Courts that have addressed gender dysphoria have recognized it as a serious medical condition. In *Fields v. Smith*, the 7th Circuit upheld the lower court ruling that denying medically necessary transition-related health care violated the Eighth Amendment's prohibition against cruel and unusual punishment. In *Adams v. Bureau of Prisons*,[4] the Bureau of Prisons agreed to reverse their "freeze frame" policy that prevented transgender incarcerated people from accessing transition-related care unless they could prove that they had already started it prior to incarceration (see "Health Care" for more about the new policy). In *Norsworthy v. Beard*, a California District Court found that refusal of transition-related surgery to a transgender incarcerated person could constitute sex discrimination. Even in *Kosilek v. Spencer*, where a transgender woman was denied the right to receive transition-related surgery, the Massachusetts court recognized that gender dysphoria is a serious medical condition.

Q: How do prisons decide whether to house a transgender person in a male or female facility?
A: Most prisons in the U.S. currently house transgender people by the sex assigned at birth or according to genital characteristics. These practices may be changing, however, in light of conflicts with the PREA, which requires that prisons make such decisions on a case-by-case basis. Using surgery to measure whether or not someone has transitioned is counter to established medical thinking. According to the World Professional Association for Transgender Health (WPATH), "Treatment is individualized: What helps one person alleviate gender

4. *Adams v. Fed. Bureau of Prisons*, 716 F. Supp. 2d 107 (D. Mass. 2010).

> **They addressed me with male pronouns and titles, forced me to sleep in a room with four men, even though I didn't feel safe, and periodically raided my belongings and confiscated anything they viewed as remotely feminine.**
>
> **—DONISHA MCSHAN**

dysphoria might be very different from what helps another person. This process may or may not involve a change in gender expression or body modifications." For more about this, please see "Transition-Related Health Care," another fact sheet in this Lambda Legal Transgender Rights Toolkit, which can be found at lambdalegal.org/publications/toolkits.

An increasing number of localities—including Cook County, IL, Cumberland, ME, Denver, CO and Washington, DC—have had success with policies that classify people by gender identity rather than sex assigned at birth. In the 2014 DC case *Shaw v. Kates*, a transgender woman who had been detained with the male prison population filed a lawsuit against the Washington, DC Metropolitan Police Department, resulting in a settlement that required, among other things, for the department to change its classification policy so that transgender detainees will be classified based on the gender listed on their ID (if they so wish). In addition, this has been the official policy in the United Kingdom since 2011.

Q: If a person seems likely to be victimized by other people in prison, should this person be placed in isolation away from the general population?

A: Prison officials often deem certain people "at-risk" and segregate them from the general population in "protective custody" or "solitary confinement." Long-term isolation is a violation of human rights because it amounts to punishment and can cause serious psychological damage.

Lambda Legal joined five other LGBT advocacy organizations in 2012 in urging a Senate panel to stop the discriminatory placement of transgender inmates and immigrant detainees in solitary confinement. Lambda Legal testified that, "Solitary confinement affects many people incarcerated in U.S. jails, prisons and detention facilities, but none so significantly as transgender inmates and immigrant detainees involuntarily confined not because of their actions, but because of their identities."

The American Civil Liberties Union (ACLU) also testified, stating that "...for prisoners and detainees who are lesbian, gay, bisexual, transgender, have intersex conditions (LGBTI), or are gender-nonconforming, solitary confinement is too often the correctional management tool used to separate them from the general population."

Under the PREA, facilities may use segregation in isolation, solitary confinement or protective custody only as a last resort. This means taking other steps to prevent abuse such as permitting transgender people to shower separately and

HEALTH CARE

NEW FEDERAL TRANSGENDER PRISON POLICY

In 2011, a settlement in the case Adams v. Bureau of Prisons (BOP) prompted a major policy reversal for federal prisons. Adams forced the government to begin guaranteeing access to hormone therapy and other care deemed medically necessary by doctors.

- Transgender people incarcerated by the BOP now must have access to "individualized assessment and evaluation."
- Also, "current, accepted standards of care will be used as a reference for developing the treatment plan," as outlined in the Standards of Care published by the World Professional Association for Transgender Health (WPATH).
- Finally, "treatment options will not be precluded solely due to level of services received, or lack of services, prior to incarceration." This tosses out the BOP's former "freeze frame" policy, whereby officials could refuse transition-related care for people who couldn't prove they had started such treatment before being incarcerated. Such arbitrary, blanket bans of health care have repeatedly been found to be unconstitutional.

HOUSING PROBLEMS AFTER PRISON

Many TGNC people face discrimination even after they are released from prison and staying in transitional housing. If you are in such a facility and are denied access to the housing and restrooms that you are most comfortable using and that matches who you are, file a complaint.

Donisha McShan (see "My Story," at the beginning of this section) was assigned to a male-only unit even though the housing facility also had female and co-ed units. Staff members threatened to send McShan back to prison if she did not comply and live as male. McShan filed an administrative grievance with the facility, because that's the procedure required to preserve her right to file a case in court, and then Lambda Legal submitted a letter informing the facility that state and federal law prohibit discrimination against transgender people who are incarcerated in government-funded facilities. An apology followed, and McShan was given back her possessions and allowed a room of her own.

exploring alternatives such as moving an aggressor to another cell or facility. Facilities must justify any use of isolated segregation for more than 30 days.

Q: Doesn't it solve all these problems when prisons have a separate "pod" for LGBT people?
A: Setting aside special areas in a prison that are only for LGBT people may offer some protection. However, segregating transgender people as an entire group—especially without their consent—can stigmatize them, cut them off from work opportunities, privileges and resources, and actually encourage violence by staff. The PREA bans involuntary segregation of LGBT or intersex people unless it is "in connection with a consent decree, legal settlement or legal judgment for the purpose of protecting such inmates."

Ideally, separation of transgender people from the general prison population should be voluntary and assessed on a case-by-case basis. People who are separated should have access to the same programs, privileges, education and work opportunities as everybody else.

FOR MORE INFORMATION:
Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to ***www.lambdalegal.org/help***.

Resources

HELP FOR TGNC INCARCERATED PEOPLE AND THEIR ALLIES

If you are in prison, please use this list to find support or ask questions about your rights behind bars. If you are not in prison yourself but want to get involved in advocating for TGNC incarcerated people, consider reaching out to one of these groups or being a pen pal. Or contact the Transgender Rights Project, Lambda Legal's initiative to win equality for TGNC people in all areas of life, through impact litigation, policy development and public education (lambdalegal.org or 866-542-8336).

American Civil Liberties Union (ACLU)
The ACLU's National Prison Project works to ensure that prisons, jails and other places of detention comply with the Constitution, domestic law and international human rights principles. (aclu.org/prisoners-rights or 212-549-2500)

Black and Pink
Black and Pink is a network of LGBTQ pen pals that also produces a newsletter of stories, advice and essays about being LGBT in prison. (blackandpink.org or members@blackandpink.org)

Jailhouse Lawyer's Manual
The Columbia Human Rights Law Review compiles A Jailhouse Lawyer's Manual, which contains information about "challenging your conviction or your sentence, your rights while you are in prison and different ways to obtain an early release from prison." (http://blogs2.law.columbia.edu/jlm/)

Just Detention International
This health and human rights organization battles sexual abuse and supports survivors, including TGNC individuals, in all forms of detention. (justdetention.org or 202-506-3333 or info@justdetention.org)

National Center for Transgender Equality (NCTE)
NCTE fights discrimination and violence against transgender people in prison and beyond, and has published "LGBT People and the Prison Rape Elimination Act" (bit.ly/MK1meQ). (transequality.org or 202-903-0112 or NCTE@transequality.org)

National PREA Resource Center (PRC)
The PRC provides information about implementation of the Prison Rape Elimination Act (PREA) in the U.S. corrections system, including current research and updates about local staff training programs. (PREAResourceCenter.org)

Sylvia Rivera Law Project (SRLP)
SRLP's Prisoner Justice Project provides legal services to improve the conditions of confinement and reduce the number of people held in prison and jail, and also helps develop guidelines on classification and care of transgender individuals. SRLP's Prisoner's Advisory Committee (PAC) asks incarcerated people for policy input and circulates a newsletter. (srlp.org/or 212-337-8550 or info@srlp.org)

Transformative Justice Project of Illinois
This is a collective of lawyers, social workers, activists and community organizers working for prison abolition, transformative justice and gender self-determination. (tjlp.org or 773-272-1822 or info@tjlp.org)

Transgender Gender Variant Intersex Justice (TGIJP)
The TGIJP mission is to challenge human rights abuses committed against transgender, gender variant/genderqueer and intersex (TGI) people in California prisons and beyond. TGIJP helps out low-income transgender people both inside and outside of prison; volunteers respond to letters from incarcerated people. (tgijp.org or 510-533-3809 or info@tgijp.org)

CHAPTER III

Workplace Rights & Wrongs

Getting and keeping a regular job is out of reach for many transgender and gender-nonconforming (TGNC) people, and the experiences endured when they do have a job can be just as traumatic. Whether accused of using the "wrong" restroom, harassed for not matching one gender stereotype or another or being the only one in the office turned down for medically necessary health care, TGNC employees often face humiliating treatment and unfair policies every day of the week.

Employment is one of the most legally challenging and personally difficult areas for TGNC people. And work is essential: Many people define themselves by it, spend lots of time doing it and can't make a living or afford health care coverage without it. In a 2011 transgender survey,[1] 90% of respondents reported workplace mistreatment or discrimination, and 26% said they lost work because of their gender identity or expression.

Being fired is especially harmful for someone already struggling with workplace tensions or outright abuse. Transgender survey respondents who had lost a job were four times as likely to be homeless as those who didn't lose a job; 70% more likely to have drinking or drug problems; and 50% more likely to be incarcerated.

Recently, there's been some success using federal sex discrimination law and state disability law to protect TGNC rights. Some states and cities are moving ahead with ordinances as well.

Private industry's record is a mixed bag. Eighty-two percent of Fortune 100 companies have transgender-inclusive nondiscrimination policies. But many are just beginning to address discrimination in their health insurance policies, thanks in part to a revised Human Rights Campaign Corporate Equality Index. In our successful effort in *Esquivel v. Oregon*, Lambda Legal maintained that a transgender state employee's denial of medically necessary health care was employment discrimination (see Lambda Legal's "Transition-Related Health Care," another fact sheet in this Transgender Rights Toolkit, at llambdalegal.org/publications/toolkits).

What's especially important at this point is for public and private employers to be explicit about protecting transgender workers, whether by clarifying existing protections under sex as encompassing "gender identity" or by adding a separate category.

Otherwise, even very extreme and obvious discrimination—such as that faced by Vandy Beth Glenn, fired after years of service when she attempted to transition on the job (she is featured below)—will continue to require considerable sweat, tears, time and money to challenge. And many well-meaning employers will remain confused about how their transgender employees are protected by the law.

1 "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," by the National Center for Transgender Equality and the National Gay and Lesbian Task Force.

MY STORY DESPAIR EVERY DAY, THEN A GROUNDBREAKING VICTORY

VANDY BETH GLENN

"I lost my job as an editor for the Georgia General Assembly when I told my boss I planned to transition. He told me that that would be seen as 'immoral' and couldn't 'happen appropriately' in the workplace. Not a day went by that I didn't think about that moment. Every day I revisited the anger, humiliation and despair I felt.

"In August 2010 a lower court ordered me reinstated. While the case was appealed to the Eleventh Circuit, I received my full salary and benefits. My appeal was heard in December

2011 and we had a positive decision just five days later. The Eleventh Circuit upheld the lower court ruling that the Georgia General Assembly had discriminated against me. [See "Victory" on the next page.]

"I hope all similar cases will have a similar outcome. But even more, I hope they put a federal law in place that will make clear such discrimination is illegal, and then people won't have to go through what I went through."

FAQ

Answers to Common Questions about Transgender Workplace Rights

Q: What exactly is ENDA and what happened to it?
A: The Employment Non-Discrimination Act (ENDA) is a law proposed in Congress that would explicitly forbid gender identity discrimination in both private-sector (nongovernment) and public employment. Lambda Legal and other LGBT advocacy groups have withdrawn support from the current version of ENDA because it permits too much discrimination by religiously affiliated organizations. We are working with congressional leadership and our allies on better language to provide LGBT workers the protections they need.

Q: What kind of employment protections do transgender employees have without ENDA in place?
A: In the past 15 years, federal appellate courts have increasingly recognized that discrimination against a transgender person is a form of sex discrimination prohibited by federal law. Lambda Legal has successfully handled some of that important litigation.

These court decisions paved the way for a historic 2012 decision from the federal Equal Employment Opportunity Commission (EEOC) in the case *Macy v. Holder*, which held that such discrimination violates Title VII of the 1964 Civil Rights Act. The EEOC's *Macy* ruling is binding on the federal government and establishes definitively that federal transgender workers have protections under Title VII. It also supports transgender employees, public and private, anywhere in the country who feel they have experienced employment discrimination, because they can now file complaints with the EEOC, which will investigate complaints and, if they are found valid, pursue settlements and sometimes file lawsuits. (See "Federal Employees" sidebar on the next page).

In 2014, 18 states and the District of Columbia expressly ban discrimination based on gender identity, as do over 130 cities and counties across the United States. Also, a growing number of private companies have antidiscrimination policies on their books that cover bias against transgender people.

Although the federal Americans with Disabilities Act has language that explicitly excludes trans people from its protections, some advocates have been successful in bringing state disability claims on behalf of trans people.

Q: How are transgender people covered by existing sex discrimination laws?
A: It is now widely considered sex discrimination when someone is treated differently for failing to conform to sex stereotypes or for changing their sex—or in some cases because gender identity is part of one's sex.

In 1989, the Supreme Court accepted the idea that treating someone differently on the basis of stereotypes could be sex discrimination—in a case that did not involve a transgender employee. The Court ruled in the case of *Price Waterhouse v. Hopkins* that Title VII did indeed protect a female accountant who didn't make partner at her firm solely because her demeanor didn't match her employer's idea of what a woman should look and act like. A supervisor wrote in a job evaluation that Hopkins could do with a "course in charm school."

2008's *Schroer v. Billington* moved things ahead a little further. A transgender woman who was offered a job at the Library of Congress when she was "David" was told she didn't have the job after all when she shared her intention to transition to "Diane." The court analogized that just as discrimination "because of religion" easily encompasses discrimination based on a change from one religion to another, discrimination based on a person's change of sex is discrimination because of sex. Some laws define sex or gender as inclusive of gender identity. New York City's Human Rights Law, for instance, has since 2002 redefined "gender" as referring not just to someone's sex but also to "a person's gender

VICTORY!
EQUAL PROTECTION FOR TRANS EMPLOYEES

On December 6, 2011, a longstanding workplace discrimination case ended in a groundbreaking ruling that firing someone based on gender-nonconformity violates the Constitution's prohibition on sex discrimination.

The Eleventh Circuit Court of Appeals upheld a lower-court ruling in the Lambda Legal case, finding that the Georgia General Assembly had discriminated against Vandy Beth Glenn, a transgender woman who was fired from her job as legislative editor after telling her supervisor that she planned to transition from male to female. (See what Glenn had to say on the previous page.)

The ruling got at the core of how the Constitution protects transgender people from workplace discrimination. Judge Rosemary Barkett, writing for the unanimous three-judge panel, said, "A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes." She went on, "[A] government agent violates the Equal Protection Clause's prohibition on sex-based discrimination when he or she fires a transgender or transsexual employee because of his or her gender non-conformity."

> **"The more people assert their identities, the better it will be for all of us."**
>
> **— VANDY BETH GLENN**

identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth."

Q: How do you know which restroom a TGNC person should use?
A: A TGNC person should use the restroom that matches who they are. But employers and coworkers don't always welcome that idea. Trans people often endure extreme discomfort or inconvenience just to keep a job—traveling some distance to use a gas station restroom, for instance, or simply "holding it."

The difficulties some TGNC people have using the restrooms in the workplace is a key rights violation because it's pretty much impossible to work without having a restroom to use. The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) prohibits employers from placing "unreasonable restrictions" on employees' access to restrooms. (For more about this issue, see Lambda Legal's "Equal Access to Public Restrooms," another fact sheet in this Transgender Rights Toolkit, available at llambdalegal.org/publications/toolkits.)

Q: What name and gender pronouns do you use if a transgender person's ID still has their pre-transition name and gender?
A: It's important for transgender people to have their preferred names and pronouns respected regardless of what it says on an ID card. Trans employees are also entitled to full privacy in such matters; employers should refrain not just from treating employees differently if gender transitions but also from shar-ing that information. It's also within every human resources department's responsibilities, however, to counsel members of the workforce and discusses an approach with which the employee is comfortable.

Q: Are employers allowed to institute dress codes according to gender?
A: Courts have allowed employers to set gender-based dress codes as long as they don't make the requirements more difficult for women than men, or vice versa. Such rules can pose a problem for transgender people when employers force them to present according to their birth sex, rather than in accordance with their gender identity. The medical community now recognizes that it is essential to the health and well-being of transgender people to live in accordance with their gender identity in all aspects of life, including gender expression via clothing. And employers increasingly see the wisdom in making that policy. If your employer is not respecting your gender identity within your workplace dress code policy, contact Lambda Legal at 866-542-8336 or go to www.lambdalegal.org/help.

FEDERAL EMPLOYEES
NEW CLARIFICATIONS THAT "SEX" INCLUDES GENDER IDENTITY

Several federal agencies have updated their employee antidiscrimination policies to include transgender workers, defining "gender identity" as part of a person's sex. Here are two excerpts:

- Office of Personnel Management (manages the federal government's civil service): "It is the policy of the Government to treat all of its employees with dignity and respect and to provide a workplace that is free from discrimination whether that discrimination is based on race, color, religion, sex (including gender identity or pregnancy), national origin, disability, political affiliation, marital status, membership in an employee organization, age, sexual orientation, or other non-merit factors."
- Equal Employment Opportunity Commission: "EEOC employees are protected by federal laws prohibiting discrimination on the basis of race, religion, color, sex (including pregnancy and gender identity), national origin, age, disability, family medical history, or genetic information."

Tips

A GOOD PLACE TO WORK

HERE'S WHAT EMPLOYERS CAN DO TO MAKE THEIR WORKPLACES FAIRER AND MORE TRANS-FRIENDLY:

1. Adopt a nondiscrimination policy that explicitly bars treating transgender people differently from other workers.

2. Ensure that your employees have access to restrooms that match who they are. Add an all-gender restroom option. (See Lambda Legal's "Equal Access to Public Restrooms," another fact sheet in this Transgender Rights Toolkit, also available at lambdalegal.org/publications/toolkits).

3. Use a health insurance company (such as Aetna, Cigna or Blue Cross/Blue Shield) that offers coverages for transition-related health care—and make sure you select for your employees plans that include that coverage. (Also see Lambda Legal's "Transition-Related Health Care," another fact sheet in this Transgender Rights Toolkit, also available at lambdalegal.org/publications/toolkit).

4. Make your workplace culture welcoming to trans people by providing mandatory trainings on trans issues. Don't wait until your first employee transitions; do it now in order to create a welcoming environment.

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to ***www.lambdalegal.org/help***.

HIRING

"SORRY, THAT JOB HAS BEEN FILLED"

TGNC people often have trouble landing jobs. The classic story is being called in to interview for a job that you're highly qualified for only to watch your interviewer's face fall—and hearing the opening has already been filled. When prospective employers overlook your job application in the first place because they happen to know you're transgender, that's discrimination too. But experiencing someone's change of mind in person is especially upsetting, not least because it's so hard to prove such bias case by case.

A 2010 study by Make the Road New York set out to measure this problem by sending out "matched pairs"—job candidates equal to each other in every way except that one was TGNC and the other was not—to do interviews in the Manhattan retail industry. In one round, 49% of TGNC employees experienced discrimination (i.e. they weren't offered a job but their cisgender equivalent was offered a job). The rate was 59% in a second round. After the New York Attorney General's office became involved, a favorable settlement was reached with one retailer, which included a revision to the employee handbook's requirements for gender-specific appearance and a mandatory training for employees on transgender issues.

So what can you do about this anti-transgender bias and the way it so often hinges on "gender expression"? The TGNC community is increasingly fighting back not just in courts, legislatures and board-rooms, but also through networking and mentoring efforts. Transgender job fairs are more and more common at local LGBT centers around the country. And the Transgender Economic Empowerment Initiative (TEEI) in San Francisco is behind a new push to specifically target work-shops and mentoring to TGNC job-seekers. (See "Know Your Rights: Transgender Youth" available at: lambdalegal.org/know-your-rights/transgender.)

UNIONS

DON'T MOURN, ORGANIZE!

These unions—some of the largest in the country—have transgender nondiscrimination clauses in some of their contracts:

- American Federation of State, County and Municipal Employees
- American Federation of Teachers
- Office and Professional Employees International Union
- Service Employees International Union
- United Auto Workers
- UNITE HERE
- United Food and Commercial Workers International Union

Photo of Vandy Beth Glenn © Joey Ivansco

CHAPTER IV

Equal Access to Public Restrooms

When you gotta go, you gotta go. Whether at work, in a restaurant or passing through a train station, pretty much everyone needs to stop into a restroom at some point while away from the comforts of home. But this simple routine is anything but that for many transgender and gender-nonconforming (TGNC) people.

Transgender refers to people whose gender identity, one's inner sense of being male, female or something else, differs from their assigned or presumed sex at birth (*cisgender* refers to people whose gender identity is the same as their assigned or presumed sex at birth). *Gender-nonconforming* people don't meet society's expectations of gender roles. For transgender and gender-nonconforming people, even just walking through the door of a public restroom can be a stressful, scary experience. The mere possibility of hostile remarks from other restroom goers, questions from store owners or mall security or arbitrary restrictions from employers can be so frightening that many just "hold it."

TGNC people get harassed in other situations too, but public restrooms tend to invite extra scrutiny based on comparisons to stereotypes about how men and women are *supposed* to look or act.

The solution is quite simple, in theory: Everyone should use the restroom that matches who they are, regardless of whether they are making a gender transition or appear gender-nonconforming. But the realities of anti-transgender bias and a widespread lack of understanding about transgender people's lives can complicate things.

Litigation in this area has been gaining traction in the past few years. A decade ago, some courts did not grasp the importance of this issue and saw restrooms as outside the realm of anti-discrimination laws. While a few of these states still have bad decisions on the books, states such as Maine and Colorado have been leading a new charge by recognizing the right of TGNC people to use the restrooms that match who they are both at school and at work.

This fact sheet is intended to help you advocate for what is right by using information about the medical and historical context of gender transition and practical ideas for improving access to public accommodations.

MY STORY A HIGHWAY REST STOP NIGHTMARE

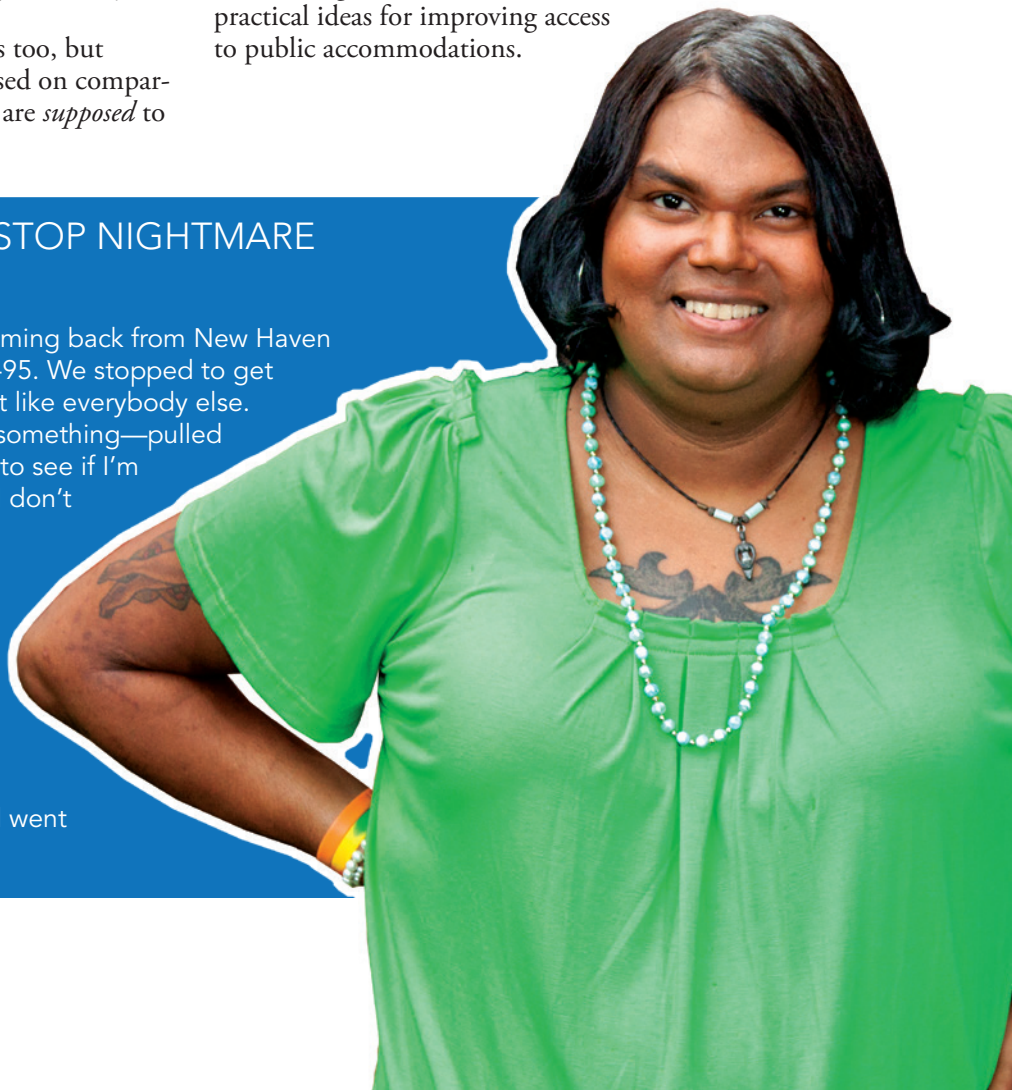
DANICA ALI

"I was in Connecticut at a rest stop. I was coming back from New Haven with some friends of mine and we were on I-95. We stopped to get something to eat and use the restroom—just like everybody else.

"I went in, and this lady—the manager or something—pulled me aside and said she wanted to see my ID to see if I'm male or female. She had this guy with her—I don't know if he was security.

"I asked her, 'Who are you?' She said she didn't have to tell me. And I told her, 'I don't have to give you my driver's permit!' She said, 'If you don't show me your ID, I'm going to call the police and say that a man is using the female restroom.' I took out my ID and I showed her my ID and it said 'female.'

"I was so upset! I just walked right out and went to the car."



FAQ

Answers to Some Common Questions about Equal Access to Public Restrooms

GOOD GOVERNMENT
SAMPLE CITIES AND STATES THAT GOT IT RIGHT

Information from states and cities around the U.S. that are doing a good job of addressing the restroom issue:

WASHINGTON, D.C., ON GENDER-NEUTRAL RESTROOM SIGNS: "All entities...with single-occupancy restroom facilities shall use gender-neutral signage for those facilities (for example, by replacing signs that indicate 'Men' and 'Women' with signs that say 'Restroom')."

IOWA LAYS OUT THE MATTER ESPECIALLY WELL: "[J]ust as non-transgender individuals are entitled to use a restroom appropriate to their gender identity without having to provide documentation or respond to invasive requests, transgender individuals must also be allowed to use a gender-identity appropriate restroom without being harassed or questioned."

WASHINGTON STATE PUTS THE ONUS ON THE BOSS: "All employers need to find [restroom] solutions that are safe, convenient and respect the transgender employee's dignity."

Q: How do you know which restroom a transgender person should use?

A: A transgender person should use the restroom that matches who they are. The medical community (and increasingly, employ-ers, schools and courts) now recognize that it is essential to the health and well-being of transgender people for them to be able to live in accordance with their internal gender identity in all aspects of life—restroom usage is a necessary part of that experience.

In *Doe v. Regional School Unit*, the Maine Supreme Court held that a transgender girl had a right to use the women's restroom at school because her psychological well-being and educational success depended on her transition. The school, in denying her access, had "treated [her] differently from other students solely because of her status as a transgender girl." The court determined that this was a form of discrimination.

The right to use restrooms that match who one is has also have also been recog-nized in the workplace and are actively being asserted in public accommodations. In Iowa, for example, discrimination in public accom-modations on the basis of sexual orientation and gender identity has been prohibited by law since 2007 through the Iowa Civil Rights Act.

Q: What if someone doesn't look masculine or feminine enough to use a particular restroom?

A: There is no rule that a person must look a certain way to use a certain restroom. This kind of "gender policing" is harmful to everyone, whether a transgender person, a butch woman, an effeminate man or anyone dressed or groomed in a way that doesn't conform to someone else's gender standards. Moreover, courts have increasingly found that discrimination against transgender people is sex discrimination. For instance, in *Mathis v. Fountain-Fort Carson School District 8*, Colorado's Division of Civil Rights found that denying a transgender girl access to the women's restroom at school was discrimination. They reasoned, "By not permitting the [student] to use the restroom with which she identifies, as non-transgender students are permitted to do, the [school] treated the [student] less favorably than other students seeking the same service." Furthermore, the court rejected the school's defense—that the discriminatory policy was implemented to protect the transgender student from harassment—and observed that transgender students are in fact safest when a school does not single them out as different. Based on this finding, it is no longer acceptable to institute different kinds of restroom rules for transgender and cisgender people.[1]

Q: Which restroom should a transgender person use if the person hasn't had genital surgery?

A: The details about whether or not someone has had genital reconstructive surgery, also called gender-affirming surgery (SRS), don't tell you anything about gender identity or someone's right to use a certain restroom—and asking about it is a major invasion of privacy, as it involves personal medical information. It could also be illegal. For instance, if employers were to impose such a "genital standard" for restroom use, they would need to inquire about the genitals of everyone in that workplace. Imagine the privacy concerns that would raise!

The fact is that very few transgender people seek gender-affirming surgery, whether because of cost, personal beliefs, concern about surgical risks or the limita-tions of available procedures. In a recent survey of 6,450 transgender people in the U.S. conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force, fewer than 25% of transgender women had undergone genital surgery, and fewer than 5% of transgender men had.

The U.S. State Department and the Social Security Administration (SSA) recently recognized this by dropping surgical

1. *Mathis v. Fountain-Fort Carson School District 8*, No. P20130034X at 10–11(Colo. Div. of Civil Rights June 17, 2013).

> **We stopped to get something to eat and use the restroom—just like everybody else.**
>
> **—DANICA ALI**

requirements to change the gender listed on passports and SSA records.

Q: Don't unisex restrooms leave women more vulnerable to being harassed or attacked by men than gender-segregated restrooms do?
A: This argument is based on a myth: There is no evidence that gender-segregated restrooms are "safer" for cisgender women than unisex restrooms. And besides, there are laws protecting people from criminal conduct in public restrooms. If anything, a concern for safety weighs in favor of restroom accessibility. Transgender people face a uniquely high degree of harassment—53% of 6,450 transgender people reported being harassed or disrespected in a place of public accommodation in a recent survey conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force. In *Mathis v. Fountain-Fort Carson School District 8*, Colorado's Division of Civil Rights found that barring transgender students from gender-segregated restrooms may out an individual as transgender and invite the very harassment that a school or employer claims to want to prevent. Providing individual restrooms can be a solution for dealing with these concerns, as long as transgender people are not *required* to use them.

Q: Are individual or unisex restrooms better for transgender people than segregated restrooms?
A: Transgender people should not be singled out as the only people using any particular restroom. But providing individual and/or unisex restrooms is not a bad idea, because they do provide more options for TGNC people, as well as for people with young children and people with disabilities who need help from someone of a different gender.

Q: What should an employer do when a non-transgender employee complains about being uncomfortable sharing restrooms with a transgender employee?
A: In *Cruzan v. Special School District #1*, decided in 2002, a Minnesota federal appeals court ruled that it isn't the job of the transgender person to do the accommodating. Employers need to offer an alternative to the complaining employee in these situations, such as an individual restroom.[2]

Q: Are employers allowed to tell an employee to use a restroom that does not match the person's gender identity or presentation?
A: Employers should make the workplace fair for all employees. Currently, 18 states

2. *Cruzan v. Special School District #1*, 294 F.3d 981 (8th Cir. 2002).

HISTORY

PUBLIC RESTROOMS HAVE ALWAYS BEEN A CIVIL RIGHTS BATTLEGROUND

Restrooms have played a role in virtually every civil rights movement in the United States. Controlling the way people use—or are not allowed to use—restrooms has been a tool for degrading people of color, excluding women from traditionally male jobs and keeping people with disabilities from accessing public accommodations and employment.

The public humiliation often involved makes it especially hard to confront restroom discrimination and educate the general public. But the same basic principle holds true for transgender people and those who have confronted this issue before: Everyone deserves to be treated with respect and dignity, including while involved in such basic human activities as using a public restroom.

HEALTH

TWO REASONS WHY RESTROOM ACCESS IS ALSO A HEALTH ISSUE

1. USING APPROPRIATE RESTROOMS IS AN ESSENTIAL PART OF TRANSITIONING

The most critical aspect of gender transition, according to the internationally-recognized medical protocol set by the World Professional Association for Transgender Health, is to ensure that a transgender person is able to live, be seen and be treated by others in a matter consistent with the person's gender identity. Getting used to using the appropriate restroom is an important part of this process. Moreover, transgender people must take this step well before proceeding—if at all—to medical interventions involving hormones or surgery.

2. "HOLDING IT" MAY BE HAZARDOUS TO YOUR HEALTH

According to the U.S. Occupational Safety and Hazards Administration (OSHA), delaying going to the restroom when you need to go is unhealthy, and so, workplace policy may not encourage it. This is not to mention the dehydrating effects of trying to avoid using restrooms by limiting intake of liquids, another common strategy for TGNC people navigating uncomfortable restroom situations in the workplace and at other public accommodations.

(CA, CO, CT, DE, HI, IL, IO, ME, MA, MD, MN, NJ, NV, NM, OR, RI, VT, WA) and the District of Columbia have employment laws that explicitly protect employees on the basis of gender identity. Moreover, the U.S. Occupational Safety and Health Administration (OSHA) forbids employers from placing "unreasonable" restrictions on restroom access. By insisting that someone use the wrong restroom, an employer is both violating the employee's privacy, exposing that employee to harassment by effectively outing him or her as transgender and potentially even compromising the employee's health (see *Health* sidebar on the previous page of this fact sheet).

Q: Is it okay to propose that a company's restrooms be more trans-friendly?
A: Yes! Advocacy is the most important part of the fight for transgender rights. And if employers adopt pro-trans policies proactively, instead of waiting for a transgender person to pave the way, there's much less chance of having problems down the line. Need ideas for a comprehensive policy? Check out the sidebar on this page regarding the federal government's Office of Personnel Management's restroom policy.

WASHINGTON

SETTING AN EXAMPLE: A NEW POLICY FOR TRANSGENDER EMPLOYEES OF THE FEDERAL GOVERNMENT

"The Department of Labor's Occupational Safety and Health Administration (DOL/OSHA) guidelines require agencies to make access to adequate sanitary facilities as free as possible for all employees in order to avoid serious health consequences. For a transitioning employee, this means that, once the person has begun living and working full-time in the gender that reflects the employee's gender identity, agencies should allow access to restrooms and (if provided to other employees) locker room facilities consistent with the person's gender identity. While a reasonable temporary compromise may be appropriate in some circumstances, transitioning employees should not be required to have undergone or to provide proof of any particular medical procedure (including gender-affirming surgery) in order to have access to facilities designated for use by a particular gender. Under no circumstances may an agency require an employee to use facilities that are unsanitary, potentially unsafe for the employee, or located at an unreasonable distance from the employee's work station. Because every workplace is configured differently, agencies with questions regarding employee access to any facilities within an agency should contact OPM for further guidance."

Tips

IF YOU'RE BEING HASSLED IN A RESTROOM ABOUT YOUR GENDER EXPRESSION…

1. Stay calm so that you can read the situation and figure out whether or not you're safe. You can always leave the scene if you feel threatened and come back later with a friend to file a complaint.
2. Report the incident to a manager, owner or someone in charge. Explain to them that you are using the restroom that matches who you are.
3. Educate. Show them this toolkit! Explain that transgender people deserve to be treated with respect and dignity and are harmed by being denied access to appropriate restroom facilities.
4. If you are still denied access to the appropriate restroom, you can file a complaint with your local or state anti-discrimination agency. Denial of access to the appropriate restroom for transgender people could be considered sex discrimination under the law. You may also live in one of the dozen or so states or over 125 cities and counties where there are specific protections against discrimination on the basis of gender identity.
5. Let us know. Lambda Legal's Help Desk (toll-free: 866-542-8336 or www.lambdalegal.org/help) takes calls from transgender and gender-nonconforming people who have experienced discrimination.

Photo of Danica Ali © Glenn Koetzner

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to ***www.lambdalegal.org/help***.

CHAPTER V

Identity Documents

Carrying identification that reflects your genuine, real-world self is basic—whether you're transgender or not. That's what IDs are for. So imagine if every time you tried to travel, open a bank account or start a new job, someone harassed you about your ID. Is it fake? Are you pretending to be someone you're not?

When a transgender person's ID is called into question, whether on suspicion of lying or out of an inappropriate interest in finding out whether they've had surgery, it amounts to harassment and discrimination and, in many cases, a violation of privacy. Forty percent of National Transgender Discrimination Survey[1] participants who presented ID that didn't match their gender presentation were harassed, 15% were asked to leave an establishment and 3% were assaulted.

There is no set medical formula for transitioning. The Standards of Care established by the World Professional Association for Transgender Health (WPATH) state that for some, transition involves simply living in accordance with one's gender identity, while for others there may be medical interventions required such as hormone therapy or gender-affirming surgery. All this needs to be evaluated on a case-by-case basis between a trans person and their doctor.

These facts are beginning to influence ID policy. WPATH urged in 2010 that governments and other bodies "move to eliminate requirements for identity recognition that require surgical procedures." Indeed, every single U.S. federal agency with the exception of the Department of Defense (as of August 2014) has changed its policy to be in sync with the medical community's standards for transition. About half the states are modernizing their birth certificate and driver's license policies.

This fact sheet is intended to answer questions about changing the gender marker or name on your identification and to bring you up to date about some of the work advocates are doing to help transgender people obtain accurate identity documents that will make their lives easier.

1. See National Gay and Lesbian Task Force and National Center for Transgender Equality's *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, available at www.endtransdiscrimination.org/report.html

MY STORY
OLD DRIVER'S LICENSE, NEW STATE
ANAND KALRA

"Before I had any documentation that matched my public presentation and my gender identity, it was uncomfortable and could be scary—and it was a disincentive to apply for certain types of jobs. But then in California I was able to get a driver's license with a new name and gender.

"There was definitely a psychological affirmation that yes, this is who I am, this is what I look like, and I feel comfortable passing this around with friends. Whenever anyone says, 'Let me see your driver's license picture,' I feel good doing that.

"I live in Michigan now, and so far I've been very lucky because the places I have gotten work have already had gender identity as a protected class in the non-discrimination policies.

"But I can't go in and get my Michigan driver's license by taking my California license and my passport or my social security card to the secretary of state's office. The laws here are different, so I would have to go and get my name officially changed and get my gender marker changed on my social security account. There's the financial barrier there, and then just the bureaucracy of it is enough to make me want to throw my hands up in the air."

FAQ

Answers to Common Questions about Identity Documents

ID CASE LAW

IDENTITY DOCUMENTS SHOULD SHOW "LIVED GENDER"

In March 2012, a federal court in Alaska became the first to rule that the absence of a process to change a person's gender marker on a driver's license to match one's "lived gender expression or identity" infringes on a person's constitutional right to privacy because it threatens the disclosure of personal medical information. The court ordered the Alaska Division of Motor Vehicles to come up with a new policy that allows for gender marker change.[2]

Among other key legal efforts to get IDs to reflect lived gender is the effort by advocates to remove outdated surgery requirements for gender marker changes on birth certificates. Lambda Legal and other advocates pushed New York State to lift its surgery requirement with great success, and now New York City also has changed its policy and stopped requiring surgical treatment.

2. K.L. v. State, No. 3AN–11–05431 C, 2012 WL 2685183 (Alaska Sup. Ct. Mar. 12, 2012).

Q: Do I need gender-affirming surgery to change the gender marker on my ID?

A: Many agencies responsible for changing documents such as birth certificates or driver's licenses do still require proof of surgery, but there is a trend toward recognizing that this requirement is burdensome and creates an unfair barrier for most transgender people.

The American Medical Association (AMA), the nation's largest physician organization, called in 2014 for "modernizing" birth certificate policies by eliminating surgery requirements.

The U.S. government is gradually falling into line. On June 9, 2010, the State Department stopped requiring proof of surgery for issuing passports and consular birth certificates to transgender people and began asking instead for proof of "appropriate clinical treatment for gender transition to the new gender"—better reflecting the individualized nature of treatment for gender transition. Since then, the Social Security Administration, Department of Homeland Security, Veteran's Health Administration and Office of Personnel Management have followed suit and no longer require proof of surgery to obtain gender designation changes.

Q: How do I change the gender on my birth certificate?

A: Birth certificates are generally harder to change than other documents; the standard of proof is higher because it's a so-called vital record, considered "official" by government and private agencies alike.

Many of the 57 state, local and territorial jurisdictions that administer birth certificates require a court order to change or amend them (a costly and time-consuming process of petitioning a judge for an order stating that you are now male or female) and/or a letter from a surgeon certifying gender-affirming surgery. California, the District of Columbia, Iowa, New York City, New York State, Oregon, Vermont and Washington State have removed surgical requirements completely for those applying to change a birth certificate. Tennessee is the only state that has a statute specifically forbidding the correction of gender designations on birth certificates for transgender people. Other states, such as Idaho and Ohio, prohibit it through either court decision or agency practice. A court in Puerto Rico recently ruled that gender markers can under no circumstance be changed on identity documents.

To find out about the law where you live, check out Lambda Legal's "Changing Birth Certificate Sex Designations: State-By-State Guidelines" list at lambdalegal.org/know-your-rights/transgender/changing-birth-certificate-sex-designations.

Q: How do I change the gender on my driver's license?

A: These rules differ from state to state as well. Departments of Motor Vehicles in about half the states have removed surgical requirements completely for those applying to change their gender marker on their driver's licenses. One increasingly accepted way to simplify gender marker changes on driver's licenses is to fill out a standardized form; neither legal nor medical approvals are required. At the Washington, D.C. Department of Motor Vehicles, where this new system is in place, the applicant fills out the top half of the form and the health or social service professional fills out the bottom half. Forms helps applicants avoid the subjective determination of specific clerks who may not know the legal specifics or may have prejudices of their own.

Q: Do I have to go to court to get my gender changed on my ID?

A: Some states and agencies do require that you obtain a court order to make the change on your documents. This can create an extra and unnecessary hurdle for some people who can't afford an attorney or to pay court fees, but in fact it can be helpful to have an official judgment in hand if your gender identity is being questioned by someone in a position of authority.

> **When I was able to get a driver's license with a new name and gender, there was definitely a psychological affirmation that yes, this is who I am, this is what I look like.**
>
> **—ANAND KALRA**

Q: What about changing my name on ID documents—does it matter?
A: Documenting a name change may be an irrelevant detail for some people—whether transgender or not, you just call yourself what you like and don't worry about what government records say. But taking on a new name is very often the first step in a person's transition, a concrete signpost that they are beginning to live in accordance with their gender identity. Opting not to change a name also puts some people at risk of violence because it reveals that they are transgender when they show their ID. Having more than one name can also raise suspicions among employers, landlords or police officers.

Q: How do I change my name officially?
A: You're usually allowed to change your (first or last) name to anything you like as long as it's not for purposes of fraud and as long as you give notice. Different states have different requirements. A fee is generally involved, and some courts require that a lawyer represent you.

Some states, like California, allow for common-law name changes—if you live with a new name for a certain period of time, it automatically becomes official without needing to process any documents. Transgender people are generally advised to take advantage of more concrete legal procedures when available, however, because banks and other institutions generally decline to recognize a common-law change.

In any case, transgender people are very commonly thwarted in the routine process of filing papers for a name change when courts ask invasive questions about their gender transition. Lambda Legal submitted an amicus brief in a 2009 case that challenged a New York City civil court judge's requirement that transgender people show "medical need" for their name changes. In striking down the requirement, an appellate court stated, "there is no sound basis in law or policy" to make transgender petitioners share private medical information just to change their names.[3]

Transgender residents of New York State seeking to change their names can get free legal assistance from the Transgender Legal Defense and Education Fund, Inc.'s Name Change Project. The Project is considered a model relationship between the private bar community and the transgender community. Find out more at transgenderlegal.org/work_show.php?id=7.

Q: What about changing my name and gender marker on my school records?
A: The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student educational records and also gives current and former students the right to amend those records to match their legal documents if they are "inaccurate, misleading, or in violation of the student's rights of privacy." (For more records information, see "A Transgender Advocate's Guide To Updating And Amending School Records" at lambdalegal.org/know-your-rights/transgender/ferpa-faq and www2.ed.gov/policy/gen/guid/fpco/faq.html.)

Also see "Transgender College Students," another fact sheet in this Transgender Rights Toolkit at lambdalegal.org/publications/toolkits, as well as Lambda Legal's *Bending the Mold* at lambdalegal.org/publications/bending-the-mold and GLSEN's *Model District Policy* for TGNC students at glsen.org/modeltranspolicy.

PRIVACY
YOUR SOCIAL SECURITY NUMBER MAY REVEAL YOUR TRANSGENDER STATUS

One federal agency that is not up to speed on transgender issues is the Social Security Agency (SSA). In this case, the policy that needs updating is not about identification, but about computer systems that disclose transgender status to employers doing background checks on prospective or current employees. It's called "gender matching" and lots of people have lost jobs over it—if the record of your gender in the Social Security database does not match the gender marker on your work application, the SSA sends your employer a letter notifying them. The SSA has stopped gender matching for private employers, but still performs it for public employers. A coalition of advocates is urging the agency to make its public-employer systems consistent with passport rules and other federal policies. To see the letter that Lambda Legal and eight advocacy groups wrote to the SSA to urge it to change its policies, visit lambdalegal.org/in-court/legal-docs/ltr_ssa_20120517_transgender-policies

3. *In re Winn-Ritzenberg*, 891 N.Y.S.2d 220 (N.Y. App. 2009)

Q: What if I am an undocumented immigrant?
A: If you are an undocumented immigrant, you will probably face even more obstacles in securing identity documents with your actual gender identity.

The following states, districts and territories offer driver's licenses for undocumented immigrants: California, Colorado, Connecticut, District of Columbia, Illinois, Maryland, Nevada, New Mexico, Puerto Rico (after 1 year of residency), Utah and Washington.

Many Latin American countries offer consular identification cards for their citizens in the U.S. However, it is not clear whether you can get a consular identification card or even a passport with your actual gender identity.

INTERNATIONAL
TRANS RIGHTS ARE HUMAN RIGHTS

Transgender advocates around the world are gaining momentum in the push to modernize requirements for gender marker change on official documents. Argentina set an international standard in 2012 with a comprehensive transgender rights law that allows for a person to simply fill out a form to change their official name and gender marker without approval from a judge or doctor. Other countries, including Sweden, Denmark and the Netherlands, have recently eliminated requirements of sterilization, surgery and divorce after these requirements drew attention from international human rights organizations.

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to ***www.lambdalegal.org/help***.

Resources
HOW TO CHANGE YOUR ID DOCS

These organizations and websites can offer guidance to transgender people needing to change their gender markers or names on identity documents.

BIRTH CERTIFICATES: Lambda Legal has compiled a state-by-state directory of birth certificate guidelines: http://www.lambdalegal.org/know-your-rights/transgender/changing-birth-certificate-sex-designations

DRIVER'S LICENSES: The National Center for Transgender Equality offers this guide to rules on changing your gender marker or your name on a driver's licenses: transequality.org/Resources/DL/DL_policies.html

FEDERAL LAW: Another resource from NCTE: transequality.org/Resources/NCTE_Blueprint_for_Equality2012_ID_Documents.pdf

NAME CHANGES AND OTHER STATE-SPECIFIC ASSISTANCE:

- Chicago House TransLIFE Center, Chicago, IL: chicagohouse.org/?post_causes=translife-center
- FreeState Legal, Baltimore, MD: freestatelegal.org/
- Gender Health Center, Sacramento, CA: thegenderhealthcenter.org/
- Gender Justice Nevada, Las Vegas, NV: http://genderjusticenv.org/
- GLBT Colorado, Denver, CO: glbtcolorado.org
- L.A. Gay and Lesbian Center, Los Angeles, CA: lalgbtcenter.org/
- Freedom Center for Social Justice LGBTQ Law Center, Charlotte, NC: fcsj.org/main/the-freedom-center-for-social-justice-lgbt-law-center/
- Mazzoni Center, Philadelphia, PA: mazzonicenter.org
- New York Legal Assistance Group, New York, NY: nylag.org
- Oklahoma Equality Center, Tulsa, OK: okeq.org/
- OutFront Minnesota, Minneapolis, MN: outfront.org
- QLaw, Seattle, WA: q-law.org
- Sylvia Rivera Law Project, New York, NY: srlp.org
- Trans Georgia Legal: transgeorgialegal.org/
- Transgender Law Center (San Francisco): transgenderlawcenter.org
- Trans Legal Advocates of Washington (TransLAW), Washington, DC (including Maryland and Virginia): translawdc.org/clinic
- Transgender Legal Defense and Education Project (TLDEF), New York, NY: transgenderlegal.org
- Whitman-Walker Health Legal Services, Washington, DC: whitman-walker.org

Photo of Anand Kalra © Sean Carter

CHAPTER VI

Immigration Issues

Many transgender people immigrate to the United States to escape persecution or violence in their countries of birth only to experience similar problems in the U.S., in addition to the threat of being detained or deported.

Transgender immigrants in the U.S. often have trouble meeting basic needs because they face employment discrimination and are commonly denied or fired from jobs. Many immigrants do not have health insurance and even if they do, most public and private insurance companies exclude transition-related health care. Immigrants living with HIV may find access to medications difficult or impossible. Many transgender people also are unable to obtain identity documents that reflect their current gender, so immigration documents may or may not represent who they are.

According to the National Coalition of Anti-Violence Programs, 44% of reported hate murders in 2010 were committed against transgender women. (See "Fighting Anti-Trans Violence," another fact sheet in this Transgender Toolkit series, at lambdalegal.org/publications/toolkits). Transgender people in immigration detention are at especially high risk of being harassed or sexually assaulted (see "Sexual Assault in Detention: New U.S. Rules Fall Short" on page 25).

To be better informed about their rights and whether they are eligible for any immigration relief, transgender people should consult with a trustworthy attorney regarding immigration issues.

This fact sheet provides basic information for transgender immigrants in the U.S. regarding some of the most common problems. If you feel you have been discriminated against because of your gender identity, gender expression, sexual orientation or HIV status, contact Lambda Legal through our Help Desk (866-542-8336) or visit us online at lambdalegal.org/help.

MY STORY ASSAULT, ASYLUM AND CLOSE FAMILY TIES

ARIANNA LINT (WITH HER MOTHER, MARIA)

"In Peru, before my transition, I was the victim of a lot of bullying for being a queer guy and a very feminine person—and I was attacked by the police. Once, when I was getting off work at a nightclub, I was stopped by a police officer. He drove me to a parking lot at the beach, put a gun to my head and sexually assaulted me. And then he left me on the beach. There were other incidents too.

"That's why the U.S. granted me asylum. But when I came here and did my transition, I saw more problems for transgender people. We don't have protections.

"My mother is very supportive. People from high school tell me they see her and ask, 'Oh, Mrs. Lint, how is your son Antonio?' My mother has a picture of me in her purse, and she says, 'No, Antonio is no more. Now it's Arianna.' She shows my pictures and talks about what I'm doing over here in the United States.

"I'm not allowed to visit her because of the kind of asylum I have—'withholding of removal.' So she comes here every year for Mother's Day."

FAQ

Answers to Common Questions from Transgender Immigrants

Q: Can I apply for asylum in the U.S. as a transgender immigrant?
A: Yes, if you are at a substantial risk of being persecuted in your home country by government officials—or being persecuted by others with the government's approval—for your sexual orientation, gender identity or expression, or because you have HIV, you might be eligible to remain in the U.S. through political asylum. Talk to a trustworthy attorney about filing an asylum application with the United States Citizen and Immigration Services (USCIS). (Beware of *notario* fraud! Avoid taking advice about your immigration from a notary public or immigration consultant. A directory of legal service providers in your area is available at www.weownthedream.org/legalhelp/.) In the absence of extraordinary or changed circumstances, you must file your application within a year of entering the country. Ask an attorney about the specifics of your case, especially if you have a criminal background.

Q: If I have been the victim of a crime in the U.S., can I apply for a special visa?
A: A special visa called a U Visa may be granted to immigrants who have been the victim of certain crimes (including sexual assault and domestic violence), suffered injury because of the crime and then helped the police to resolve the crime.

Consult an attorney who is knowledgeable about immigration law to find out if you are eligible for a U visa.

Q: How do I change the gender marker on my U.S. passport—and other identity documents?
A: If you want to change the gender on your U.S. passport, you need a letter from a licensed physician that certifies that you have had "appropriate clinical treatment." Treatment no longer needs to include gender-affirming surgery, because in 2010 the State Department dropped its policy of requiring proof of surgery—better reflecting the individualized nature of treatment for gender transition.

Immigrants in the U.S. follow the same rules as non-immigrants for changing their gender markers on domestic U.S. documents, such as driver's licenses and birth certificates. Policies still vary widely from agency to agency—although it is increasingly recognized in the U.S. that surgery is not part of gender transition for some people and that a person's own doctor is best situated to attest to appropriate clinical treatment.

Departments of Motor Vehicles in about half the states have removed the surgical requirement completely for people who want to apply to change their gender marker on their driver's licenses. In 2013, the Social Security Administration eliminated its surgery requirement. California, the District of Columbia, Oregon, Vermont and Washington have also eliminated it for changing gender status on birth certificates. In addition, several states offer access to driver's licenses for undocumented immigrants.

(For more information, see the "Identity Documents" fact sheet, part of this Transgender Toolkit and available at lambdalegal.org/publications/toolkits and, in Spanish, at lambdalegal.org/es/publicaciones.)

Q: How do I change the gender on my non-U.S. passport?
A: Many countries still do not allow you to change the gender on your passport. In Canada and certain areas of Mexico, you may change the gender on your passport by getting a new birth certificate but still must submit written proof of surgery to do so. Many Latin American countries offer consular identification cards for their citizens in the U.S., but it is not clear whether you can get a consular identification card or a passport with your actual gender identity.

As of 2014, Argentina and Denmark are the only Latin American and European countries that allow you to change the gender marker on your passport simply by going to a consulate and filling out a form.

Q: What should I do if I am questioned or stopped by police or immigration or they come to my home?
A: If police or immigration officials come to your home or work, they must have a warrant to enter. (A warrant is a piece of paper signed by a judge giving permission to enter your home or workplace.) Ask the officials to slip the warrant underneath the door. If you open the door and allow them to come into your home or workplace, this may be considered giving them "consent" to enter. If they enter without a warrant, request their names and badge numbers and state that you did not "consent" to a search.

If police or immigration officials stop you on the street and do not have a warrant, they may not arrest you without evidence that you are a non-citizen. You do not have to consent to a search of yourself or your belongings. Do not lie about your citizenship status or provide fake documents. Do not carry with you any documents that are from your country of origin or are false.

You have the right to remain silent and to speak to a lawyer. Avoid questions about where you were born or how you got to

> **When I came here [from Peru] and did my transition, I saw more problems for transgender people.We don't have protections.**
>
> **—ARIANNA LINT**

this country, and don't sign any documents before speaking with a lawyer, even if officials are pressuring you to do so. (See the "Behind Bars" sidebar on the next page for more information about your rights in detention.)

If you are arrested by police, do not resist, even if you believe the arrest is unfair. Say that you wish to remain silent and ask for a lawyer immediately. If you can't pay for a lawyer, you have the right to a free one. Don't say anything, sign anything or make any decisions without a lawyer. You have the right to make a local phone call and to be assigned an interpreter if you need one. Police must release you after 48 hours (not counting weekends and holidays) if they don't formally charge you with a crime in court. If you are accused of a crime, consult with an immigration attorney to make sure that the crime will not affect your immigration status.

If you are taken into immigration custody, you have the right to a lawyer, but the government does not have to provide one for you. Ask for a list of free or low-cost legal services. Avoid signing anything, such as a voluntary departure or stipulated removal, without talking to a lawyer. If you sign, you may be giving up your opportunity to try to stay in the U.S. You also have the right to have an officer contact your consulate.

Q: Can I marry a U.S. citizen or resident and apply for a green card if I am not a U.S. citizen or resident and one of us is transgender?

A: The answer to whether you can get married depends on where you live and where the marriage takes place. The answer to whether you can apply for a green card depends on the specifics of your case.

If you are not married yet and not yet in the U.S., the partner who is an American citizen can apply for a K-1 fiancé(e) visa to allow you to enter the U.S. with the specific goal of getting married and applying for a green card; this is at the federal level. It doesn't matter what gender either of you are; whether you are transgender or not; or whether you are a same-sex or opposite-sex couple.

If you are already in the U.S., however, your marriage will only be recognized under certain conditions:

Finally, assuming you can get legally married, whether you can apply for a green card depends on the specifics of your case—for example, how you entered the country and whether you married a U.S. citizen or resident. Consult a trustworthy attorney on how best to go about applying for these benefits once married.

For more information about marriage rights for transgender people, see Lambda Legal's "Transgender People and Marriage Laws" fact sheet (lambdalegal.org/publications/trt_transgender_marriage-laws).

THREE IMPORTANT FACTS ABOUT TRANSGENDER IMMIGRANTS

In the National Transgender Discrimination Survey (NTDS), undocumented transgender non-citizen respondents reported:

1. Three times more workplace **sexual assault** based on being transgender or gender-nonconforming, compared to U.S. citizens.
2. More **lost jobs** due to bias than U.S. citizens.
3. And non-citizen transgender respondents overall (whether documented or not) reported more than twice the rate of **HIV infection** of U.S. citizens.

(The 2011 NTDS is a survey of 6,450 transgender and gender-nonconforming people conducted by the National Gay and Lesbian Task Force and the National Center for Transgender Equality. A report on the findings is available at www.endtransdiscrimination.org.)

Q: As a young immigrant who is transgender, do I have special rights to avoid deportation?

A: You may be eligible for Deferred Action for Childhood Arrivals (DACA) if you came to the U.S. before you were 16 and can meet other requirements. Visit this Immigration Equality webpage to find out if you're eligible: http://bit.ly/1sPTAS5

HEALTH CARE
AS A TRANSGENDER IMMIGRANT, WHAT SHOULD I DO IF….

…I HAVE A MEDICAL EMERGENCY?
Go to a hospital or emergency room; they are required by federal law to provide emergency health care to everybody. Keep in mind that the care provided might be very basic and that you may have to pay for it. Depending where you live, you might be able to go to an LGBT-specific clinic.

…I NEED HEALTH INSURANCE?
There is medical consensus that transition-related care can be medically necessary, but even if you have access to public or private insurance, you should know that most plans still have exclusions.

If you have documents that authorize you to live or work in the U.S., then you may have access to health insurance through the Affordable Care Act (ACA). Low-income individuals may be eligible for Medicaid, a publicly funded federal-state health program. "Qualifying" immigrants, such as legal permanent residents and asylees who have held this status for five years or longer, may be able to receive free or low-cost health coverage through Medicaid. Some states, such as California, provide full benefits under Medicaid, or Medi-Cal, for immigrants "permanently residing under color of law," which includes "lawfully present" immigrants. ("Permanently residing under color of law" means that immigration authorities are aware of a person's presence but have no plans to deport/remove him or her from the country. It is interpreted differently, depending on the benefit program and jurisdiction.)

If you are undocumented, your options are more limited. Undocumented people and Deferred Action for Childhood Arrivals (DACA) recipients may not use their own money to purchase health care under the ACA. Depending on the state, you might qualify for Emergency Medicaid if you are low-income, which will cover health care services for emergency care. In some states, such as California, you can get health care through local county health programs. You can also receive care from Federally Qualified Health Clinics and other community clinics.

…I'M A STUDENT?
If you are a transgender student attending a U.S. college or university, you may have the option of buying the school's health insurance (some cover transition-related health care; others do not). Immigration status is generally not a factor. High school-age immigrants often qualify for Emergency Medicaid or state-sponsored health insurance.

If you receive poor or degrading health care, or if you have problems accessing transition-related care or health insurance, call Lambda Legal's Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help. También hablamos español.

For more information about health care, see Lambda Legal's "Transition-Related Health Care" fact sheet at lambdalegal.org/publications/trt_transition-related-health-care.

BEHIND BARS
YOUR RIGHTS IN IMMIGRATION DETENTION

According to the U.S. government's Immigration and Customs Enforcement (ICE), you have the following rights in federal immigration detention—although the truth is that these rules often remain unenforced:

1. GENDER-APPROPRIATE CLOTHING: You have the right to have access to clothing according to your gender identity, but underwear is generally assigned at the discretion of each particular detention center.

2. TRANSITION-RELATED CARE: You have the right to have access to hormone treatment if you were taking it prior to detention—and to proper medical evaluation if you were not.

3. HIV MEDICATIONS: You have the right to have access to HIV meds while in detention.

4. STRIP-SEARCH OPTIONS: When a strip-search is required, transgender men and transgender women have the right to choose whether the searcher is a man or woman.

5. THE RIGHT NOT TO BE PLACED IN ISOLATION AND NOT TO BE SEXUALLY ASSAULTED OR HARASSED: (See "Sexual Assault in Detention: New U.S. Rules Fall Short" on page 5.)

If you want to file an official complaint with the U.S. Office for Civil Rights and Civil Liberties, go to: www.dhs.gov/file-civil-rights-complaint. If you are a family member, attorney or advocate, keep in mind that you will need to include written permission from the person being detained to file a complaint on his or her behalf.

If you're denied clothing that is in line with your gender, transition-related care, HIV meds, a strip-search by staff of your same gender, or if you're put in isolation, or sexually harassed or assaulted while in detention, call Lambda Legal's Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help. También hablamos español.

SEXUAL ASSAULT IN DETENTION
NEW U.S. RULES FALL SHORT

Some transgender advocates were disappointed in March 2014 when the U.S. Department of Homeland Security (DHS) issued new rules about dealing with sexual assault in immigration detention centers that failed to include key recommendations about transgender detainees. In 2012, the Department of Justice had issued rules for handling sexual assault in jails and prisons (outside of the immigration system) that are considered much stronger. Concerns about immigration detention from Lambda Legal, the National Center for Transgender Equality and the Transgender Law Center include these:

1. The continued use of **solitary confinement**, which in many cases has been used to separate transgender detainees from the general population "for their protection" and has been shown to cause psychological harm.

2. The failure of the new regulations to prohibit retaliatory **deportation of those who report abuse**.

3. Transgender detainees are given the opportunity to **shower separately** from other detainees only when "operationally feasible."

4. The new regulations apply to DHS contract facilities only when substantive contract modifications are negotiated, which may mean a delay of years.

Resources
INFORMATION AND SUPPORT FOR TRANSGENDER IMMIGRANTS

Along with Lambda Legal, these organizations offer education and advocacy specific to transgender immigrants.

ACLU Immigrants' Rights Project
Dedicated to expanding and enforcing the civil liberties and civil rights of non-citizens and to combating public and private discrimination against immigrants. (212-549-2500 or www.aclu.org)

*** Immigration Equality (New York, NY)**
Works to ensure immigration rights for lesbian, gay, bisexual and transgender people and those living with HIV. (212-714-2904 or www.immigrationequality.org)

Mariposas Sin Fronteras (Tucson, AZ)
Supporting LGBTQ people in immigration detention. (www.mariposassinfronteras.org)

National Center for Lesbian Rights Immigration Project (San Francisco, CA and Washington, DC)
Advocates in court for LGBT asylum seekers and immigrants. (1-800-528-6257 or www.nclrights.org)

National Center for Transgender Equality (Washington, DC)
Social justice organization devoted to ending discrimination and violence against transgender people. (202-903-0112 or www.transequality.org)

*** National Immigrant Justice Center (Chicago, IL)**
Fights for human rights protections and access to justice for all immigrants, refugees and asylum seekers. (312-660-1370 or www.immigrantjustice.org/programs/lgbt-immigrant-rights-initiative)

Queer Detainee Empowerment Project (New York, NY)
An alternative to detention programs for queer/trans/HIV-positive immigrant detainees, undocumented folks and asylum seekers and their families. (347.645.9339 or www.qdep.org)

Queer Undocumented Immigrant Project (Washington, DC)
Organizes and empowers LGBTQ-identified undocumented people, LGBTQ immigrant youth and allies. (www.unitedwedream.org/about/projects/quip)

Sylvia Rivera Law Project (New York, NY)
Advocates for self-determination of gender identity and expression. (212-337-8550 extension 308 or www.srlp.org)

*** Transgender Law Center (San Francisco, CA)**
Works to change discriminatory laws, policies and social attitudes. (415-865-0176 or www.transgenderlawcenter.org)

Transgender Legal Defense & Education Fund (New York, NY)
Committed to ending anti-transgender discrimination through impact litigation, public education and direct legal services. (646-862-9396 or www.transgenderlegal.org)

MORE IMMIGRATION HELP

Americans for Immigrant Justice (Miami, FL)
Protects and promotes the basic human rights of immigrants through free direct services, impact litigation, policy reform and public education at local, state and national levels. (305-573-1106 or www.aijustice.org)

Asian Americans Advancing Justice (Los Angeles, San Francisco, Chicago and Washington, DC)
Empowers Asian Americans, Pacific Islanders and other underserved communities. (415-848-7735, 213-977-7500 or www.advancingjustice.org)

Asian American Legal Defense and Education Fund (New York, NY)
Asian American civil rights organization that has an immigrants' rights program. (212-966-5932 or www.aaldef.org)

Asian Pacific Island Legal Outreach (San Francisco Office)
A community-based, social justice organization serving the Asian and Pacific Islander and other communities

* Se habla español

of the Greater Bay Area. (415-567-6255 or www.apilegaloutreach.org)

*** California Rural Legal Assistance (Offices throughout CA)**
A nonprofit legal services program striving for economic justice and human rights on behalf of California's rural poor. (415-777-2752 or www.crla.org)

*** Casa Cornelia Law Center (San Diego, CA)**
A public interest law firm providing quality pro bono legal services to victims of human and civil rights violations. (619-231-7788 or www.casacornelia.org)

Catholic Charities (Alexandria, VA)
Advocates for social change and reduction of poverty. (703-549-1390 or www.catholiccharitiesusa.org)

*** Central American Resource Center (Los Angeles, CA)**
Works to empower Central Americans by defending human and civil rights. (213.385.7800 or www.carecen-la.org)

*** Centro Legal de La Raza (Oakland, CA)**
Provides free or low-cost, bilingual, culturally sensitive legal aid, community education and advocacy for low-income residents of the San Francisco Bay Area. (510-437-1554 or www.centrolegal.org)

Coalition for Humane Immigrant Rights of Los Angeles (Los Angeles, CA)
CHIRLA is an organization recognized by the Board of Immigration Appeals (BIA) to provide immigration legal services. (1-888-624-4752 or www.chirla.org)

Coalition to Abolish Slavery & Trafficking (Los Angeles, CA)
Assists people trafficked for the purpose of forced labor and slavery-like practices and works to end such human rights violations. (1-888-539-2373 or www.castla.org/homepage)

Community Initiatives for Visiting Immigrants in Confinement (CIVIC) (San Francisco, CA)
Works to end the isolation and abuse of men, women and children in U.S. immigration detention. (385-212-4842 or www.endisolation.org)

Detention Watch Network (Washington, DC)
Works to expose and challenge the injustices of the U.S. immigration detention and deportation system. (202-350-9055 or www.detentionwatchnetwork.org)

East Bay Community Law Center (Berkeley, CA)
Free legal services for the low-income community in the areas of housing, welfare, HIV and health, homelessness and economic development. (510-548-4040 or www.ebclc.org)

Georgia Asylum & Immigration Network (Atlanta, GA)
Provides pro bono legal representation through volunteer attorneys to asylum seekers, immigrant victims of human trafficking, domestic violence, sexual assault and other crimes. (404-572-2609 or www.georgiaasylum.org)

Hofstra Asylum Clinic (Hempstead, NY)
Law students who represent political asylum applicants in immigration proceedings. (www.law.hofstra.edu/clinics/politicalasylumclinic)

*** Kids in Need of Defense (Washington, DC)**
Finds pro bono lawyers to serve unaccompanied children who face the U.S. immigration system alone. (202-824-8680 or www.supportkind.org/en)

*** La Raza Centro Legal (San Francisco, CA)**
Provides legal services and advocacy to empower the Latino, immigrant and low-income communities of San Francisco to advocate for their civil and human rights. (415-575-3500 or www.lrcl.electricembers.net)

Legal Aid Society (New York, NY)
Provides legal representation for low-income people throughout New York City. (212-577-3456 or www.legal-aid.org/en/home.aspx)

Political Asylum/Immigration Representation Project (Boston, MA)
Provides pro bono immigration legal services to asylum-seekers and immigrants unjustly detained in Massachusetts. (617.742.9296 or www.pairproject.org)

Pro Bono Asylum Representation Project (PROBAR, Harlingen, TX)
Provides pro bono legal services to asylum seekers detained in South Texas by the United States government. (956) 425-9231 or http://bit.ly/1ulUHcW)

Public Counsel (Los Angeles, CA)
Strives to protect the legal rights of disadvantaged children and immigrants. (213-385-2977or www.publiccounsel.org)

Public Law Center (Santa Ana, CA)
Pro bono law firm providing legal representation for low-income residents. (714-541-1010 or www.publiclawcenter.org)

Southern Poverty Law Center (Montgomery, AL)
Fights hate and bigotry and seeks justice for the most vulnerable members of our society. (888- 414-7752 or www.splcenter.org)

Texas RioGrande Legal Aid (several offices throughout Texas)
Provides free legal services to low-income residents in Southwest Texas, and represents migrant and seasonal farm workers throughout the state of Texas and six southern states: Kentucky, Tennessee, Alabama, Mississippi, Louisiana and Arkansas. (888-988-9996 or www.trla.org)

University of Miami School of Law Immigration Clinic (Coral Gables, FL)
Helps and advocates on behalf of immigrants in a wide variety of complex immigration proceedings. (305-284-6092 or www.law.miami.edu/clinics/immigration/?op=7)

* Se habla español

Photo © Roxy Azuaje

CHAPTER VII

Overcoming Health Care Discrimination

Ambulance workers jeered at and refused to treat Tyra Hunter, a transgender woman seriously injured in a car accident outside Washington, DC who later died from her wounds. The same kind of hate-fueled medical negligence killed Robert Eads, a transgender man with ovarian cancer whom 20 separate doctors wouldn't treat; one said the diagnosis should make Eads "deal with the fact that he is not a real man."

It's stories like these that scare many transgender people away from needed care, and cause them to suffer disproportionately from untreated medical conditions. There's also reason to fear a provider will share your transgender status with people who have no need to know; ask invasive and irrelevant questions; or purposefully use the wrong name or pronoun. Seventy percent of the transgender or gender-nonconforming (TGNC) people polled in a 2009 Lambda Legal survey experienced some sort of health care discrimination.

Yet individual mistreatment is just part of the problem. Most insurance companies refuse to cover transition-related health care even when a doctor considers it medically necessary. This practice continues despite medical consensus on the "efficacy, benefit and medical necessity" of transition-related treatment, as the American Psychological Association described it in 2008. (For more about that, see "Transition-Related Health Care," which is also part of this Transgender Rights Toolkit, at lambdalegal.org/publications/toolkits.)

Everyone deserves to be treated with respect in health care settings; good experiences do more than treat illness or injury. Studies show that suicide rates drop significantly when transgender people can access appropriate medical care.

This fact sheet is a practical guide to accessing basic, quality health care, whether from your family doctor or from one of the growing network of LGBT community health clinics. If you have experienced health care discrimination because you are TGNC, contact Lambda Legal's Help Desk at 866-542-8336 or lambdalegal.org/help-form.

OUR STORY

A MEDICAL EMERGENCY THAT EMS WORKERS WOULDN'T TOUCH

NAKOA NELSON; BARBARA RILEY

Barbara: "We finished at church and Nakoa was eating some cookies and he just started turning red and coughing nonstop. We drove to the fire station because it was five minutes away. I thought, 'Oh, thank God, they're going to help us.'"

Nakoa: "I've been living as a man for almost three years and I always wear a binder, but I took it off [that morning] because I was having trouble breathing."

Barbara: "When we got to the fire station, the Emergency Medical Services guys unbuttoned Nakoa's shirt all the way [and then stopped helping when they realized he is transgender.] They said there was nothing they could do."

Nakoa: "When I realized they were not going to help, the only thing I could think of is, 'We have to leave.' That's a real sensitive situation—with a bunch of guys standing around and my shirt wide open. We were lucky and found a doctor nearby who gave me steroid shots to help me breathe."

Barbara: "The doctor said Nakoa could have died [because of the delay].
I don't care if you don't like us, but to turn someone away in a life-threatening
situation…I couldn't believe it."

Nakoa: "I filed a complaint later with the Fire Commission, but it came down to my word against five reputable firemen."

Medics told Nakoa Nelson (right) that there was nothing they could do.

FAQ

Answers to Common Questions about Equal Access to Health Care

Q: Are there laws protecting transgender people's right to health care?
A: Yes, transgender people are protected from many forms of health-related discrimination.

The Affordable Care Act of 2010 (ACA) prohibits sex discrimination in federally funded health care facilities, and in 2012, the federal Department of Health and Human Services (HHS) clarified that this includes discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. Also, the Act forbids insurance providers from refusing to cover a person based on a pre-existing condition, and that includes being transgender. Transgender and gender-nonconforming individuals who suffer discrimination at HHS-funded facilities can file complaints with the HHS Office of Civil Rights (OCR), which will investigate complaints of sex discrimination.

Health care discrimination based on gender identity or expression is also barred if you live in a jurisdiction that has a law that prohibiting discrimination on the basis of sex, gender identity or gender expression in public accommodations. A number of states and the District of Columbia have also issued "insurance bulletins" reminding private insurers that it is against state law and the ACA to allow discrimination against transgender policy holders. For more information on jurisdictions with protections for transgender people, contact the Transgender Law Center.

Every state has an agency that licenses or investigates the conduct of health care professionals, and mistreating someone for being transgender certainly falls under the category of misconduct.

Finally, transgender people are protected under the standards promulgated by the Joint Commission, an independent non-profit that accredits thousands of hospitals and other health care organizations throughout the United States. In 2011, the Commission changed its standards to require hospitals to adopt policies prohibiting discrimination based on gender identity or expression. These are voluntary standards, but certification by the Joint Commission is widely recognized as a mark of quality. If you experience discrimination in a hospital or other health care organization, you can file a complaint with the Joint Commission at jointcommission.org/report_a_complaint.aspx.

Q: Is my doctor supposed to keep my transgender status private?
A: Yes, the federal Health Insurance Portability and Accountability Act (HIPAA) protects the privacy of all personally identifiable patient information, including your transgender status, your birth-assigned sex and details about your anatomy. This information cannot be shared without your consent, not even to your family or to medical personnel unless it is required by your treatment or for the purposes of payment or health care operations (such as inquiries about liability insurance).

Additionally, you can ask that your transgender status not be shared with certain people, groups or companies even if it would normally be part of health care operations or consultations regarding treatment. For example, if you go to a clinic, you can ask the doctor not to share information regarding your transgender status with other doctors or nurses at the clinic. You can also ask your health care provider or pharmacy not to tell your insurance company about care you receive or drugs that you take as long as you pay for the care or drugs in full and the provider or pharmacy does not need to get paid by your insurance company.

Q: What should I do if a health care provider discriminates against me?
A: If you experience health care discrimination based on your gender identity or expression, consider filing a complaint. One option is to file a complaint with the Office for Civil Rights at the federal Department of Health and Human Services (HHS). Find out more about that here: hhs.gov/ocr/office/file/index.html.

Another option is to contact the agency in your state that monitors professional misconduct. In New York, for example, contact the state Health Department's Office of Professional Misconduct; in California, contact the Medical Board of California.

If your state, county or city has a law barring discrimination on the basis of sex, gender identity or gender expression in public accommodations, you may file a complaint about the discrimination you have experienced. It's generally recommended that you consult a lawyer in such a case.

You may also contact Lambda Legal's Help Desk (toll-free: 866-542-8336 or lambdalegal.org/help), which takes calls from TGNC people who have experienced discrimination.

Q: How can I find a transgender-friendly health care provider?
A: The Gay & Lesbian Medical Association (GLMA) maintains an online database at glma.org where patients can search for a health care provider by zip code. National Coalition for LGBT Health member organizations can help too. There are some local directories as well:

> **I don't care if you don't like us, but to turn someone away in a life-threatening situation…**
>
> **—BARBARA RILEY**

For instance, the New York Association for Gender Rights Advocacy (NYAGRA) has a "Transgender Health Care Provider Directory" that lists trans-friendly New York City physicians, psychologists, and therapists in a variety of medical fields.

Another way to find transgender-friendly health care providers is to contact facilities such as Fenway Health in Boston; The Fenway Institute in Minnesota; Whitman Walker Health in Washington, DC; Howard Brown Health Center in Chicago; Lyon Martin Health Services in San Francisco; the LA LGBT Center in Los Angeles; and Callen-Lorde Community Health Center in New York City.

Q: Do I need a specialist just because I'm transgender?
A: No, you do not. A myth about transgender health care (and a handy excuse for negligence) is that a doctor needs to be a specialist of some kind to treat transgender people. But the truth is that most doctors are fully capable of providing care for transgender patients, whether for routine checkups; treatment of health problems; or transition-related hormone therapy. The World Professional Association for Transgender Health (WPATH) affirmed in 2012 that "Many of the screening tasks and management of co-morbidities associated with long-term hormone use...fall more uniformly within the scope of primary care rather than specialist care, particularly in locations where dedicated gender teams or specialized physicians are not available."

Q: Where can doctors find answers to questions about treating transgender patients?
A: The University of California at San Francisco's Center of Excellence for Transgender Health compiled a *Protocol for Transgender*

INSURANCE
IMPROVING ACCESS TO TRANSITION-RELATED COVERAGE

There is continued reluctance among most insurance companies to cover transition-related health care such as hormone therapy or gender-affirming surgery, which can put these treatments out of reach even when a doctor affirms they are medically necessary for a particular patient.

The insurance landscape is gradually changing, however, with a growing number of U.S. localities that cover transgender medical services, including gender reassignment surgery, as a standard benefit in their government health plans for lower-income and disabled persons. And the trend in private workplaces is such that companies hoping to score 100% on the Human Rights Campaign's annual Corporate Equality Index must now offer trans-inclusive health insurance.

Lambda Legal and other legal advocates are challenging discriminatory exclusions of transgender health care in the courts. (For more about insurance coverage of transition-related health care, please see our fact sheet, "Transition-Related Health Care," at lambdalegal.org/publications/trt-transition-related-health-care.)

COMPLETE CARE
IF YOU HAVE IT, CHECK IT

Transgender people so often experience discrimination or incompetence when they go to the doctor that many feel uncomfortable seeking the range of health care that they need. This includes check-ups for cancer prevention such as pap tests for transgender men, for instance, or prostate exams for transgender women.

Insurance coding systems that cover certain medical treatments only for one gender or the other also create barriers to care. For example, carriers typically deny uterine fibroid treatment to transmen who are enrolled as male.

Doctors' offices and insurance policies should offer "complete" health care, "regardless of the patient's self-description or identification, presenting gender, or legal status," as the Center of Excellence for Transgender Health recommends. The best advice: If you have it, check it!

Patient Care in 2011 that doctors of all kinds can use as a reference. The Protocol can be viewed online at transhealth.ucsf.edu/trans?page=protocol-00-00.

You can also encourage your provider to contact one of the trans-friendly health clinics mentioned above.

SUICIDE
ACCESS TO HEALTH CARE MAKES ALL THE DIFFERENCE

Forty-one percent of the 6,450 transgender and gender-nonconforming respondents in the 2011 National Transgender Discrimination Survey (NTDS) said they had attempted suicide (compared to 1.6% of the general population). But suicide risk seems to fall significantly once transgender people are able to access appropriate medical care. The rate of self-reported suicide attempts among participants in a 2006 study dropped from 29.3 to 5.1 percent when they were given access to transition-related treatment.

Resources
MORE ABOUT TRANSGENDER HEALTH CARE

These publications are helpful for patients and providers alike:

- ***Health Care Rights and Transgender People,*** National Center for Transgender Equality transequality.org/Resources/HealthCareRight_UpdatedMar2014_FINAL.pdf
- ***Medicare Benefits and Transgender People,*** National Center for Transgender Equality transequality.org/PDFs/MedicareAndTransPeople.pdf
- ***NYC-Metro Area Transgender and Gender Non-Conforming (TGNC) Resource Guide,*** Callen-Lorde Community Health Center callen-lorde.org/graphics/2012/03/NYC-Metro-TGNC-Resources_Updated-9_12_2013.pdf
- ***Primary Care Protocol for Transgender Patient Care,*** Center of Excellence for Transgender Health transhealth.ucsf.edu/trans?page=protocol-00-00
- ***Transgender Health and the Law: Identifying and Fighting Health Care Discrimination,*** Transgender Law Center thecentersd.org/pdf/health-advocacy/identifying-transgender.pdf
- ***Transgender Inclusive Benefits for Employees and Dependents***, Human Rights Campaign hrc.org/resources/entry/transgender-inclusive-benefits-for-employees-and-dependents
- ***Understanding the T in LGBT: A Role for Clinicians,*** The Fenway Institute trans-health.com/2013/trans-health-for-clinicians/

Photo of Nakoa Nelson and Barbara Riley © Tim Wright

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to ***www.lambdalegal.org/help***.

CHAPTER VIII

Trransition-Related Health Care

The kinds of health care associated with gender transition have too often been misunderstood as cosmetic, experimental or simply unnecessary. Yet there is medical consensus that hormone therapy and gender-affirming surgery are *medically necessary* for many transgender people. It's quite clear now that a person's gender identity—one's inner sense of being male or female—is deep-seated and cannot be changed. Therefore, this transition-related health care can be crucial.

The courts have come a long way on this issue in recent years, citing decades of medical data to find in more and more cases that not providing transition-related health care as readily as other medically necessary treatment is discrimination.

The problem is that most public and private insurance companies are still behind the times. Many cite cost, even though that hasn't turned out to be an issue at all for the growing number of employers now providing coverage. Often the real hesitation is a mixture of anti-transgender prejudice and ideas about such care that are out of sync with modern medical thinking.

The language used by doctors and the courts in this area can be frustrating, because it generally relies on technical terms such as gender dysphoria, a mental health diagnosis that describes the extreme distress some people experience when their bodies don't match their gender identity. Some people feel that this diagnosis unnecessarily stigmatizes transgender people and encourages mistreatment of them. Whatever term is used, however, it is not fair for health care policies to have different standards for treating transgender people who have medical needs associated with transition than for treating someone with diabetes who needs vital care. In both cases, a doctor makes an individualized assessment to determine if treatment is warranted—if it is, both patients should get the recommended care.

This fact sheet explains the medical community's current framework for understanding transition-related care as medically necessary and how Lambda Legal and other advocates are applying this in the legal domain to challenge denial of such care as discrimination. Also highlighted are ways that private industry and municipal government have begun to follow the medical mainstream by dropping barriers to health care for transgender people and setting standards for a more equitable future.

MY STORY A STRUGGLE, A STEP FORWARD AND THEN INSURANCE SAYS "NO"

ROMAN RIMER

"I have memories as a child of wanting to be male-bodied, but I was meant to be the way I was. I struggled a lot.

"I never enjoyed having breasts. I remember once in college I went to be fitted for a bra in a store and I couldn't stop crying. I couldn't really figure out why; I just assumed there was something wrong with me or I was too emotional.

"I bound my chest for a while and then I had surgery. My insurance company said they would cover 70 percent of a double mastectomy if there was a history of breast cancer—which was the case—but not for gender-affirming surgery. I got a letter in the mail, saying, 'We don't cover this.'"

FAQ
Answers to Common Questions about Transition-Related Care

Q: What exactly is gender dysphoria?
A: Gender dysphoria is a medical diagnosis defined by the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), the American Psychiatric Association's handbook of official diagnoses, as "[T]he distress that may accompany the incongruence between one's experienced or expressed gender and one's assigned gender." The World Health Organization recognizes gender dysphoria (formerly called gender identity disorder or GID) as "characterized by a persistent and intense distress about assigned sex together with a desire to be, or insistence that one is, of the other sex."

The American Medical Association (AMA) established in a 2008 resolution that gender dysphoria (then GID) is a "serious medical condition" with symptoms including "distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death."[1]

Q: Do all transgender people have gender dysphoria?
A: No they do not, because not every transgender person experiences the distress associated with gender dysphoria.

DEFINITION
"MEDICAL NECESSITY" EXPLAINED

Why all the focus on the term "medical necessity"? It's a technical term used by the insurance industry describing treatment that a physician considers to be vital for a particular patient.

According to the AMA, health care is medically necessary when "a prudent physician" selects it "for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is: (1) in accordance with generally accepted standard of medical practice; (2) clinically appropriate in terms of type, frequency, extent, site, and duration; and (3) not primarily for the convenience of the patient, physician, or other health care provider."

Q: What is the treatment for gender dysphoria?
A: The treatment for gender dysphoria involves some combination of "triadic therapy": hormone therapy, gender-affirming surgery and/or Real Life Experience (living for a period of time in accordance with your gender identity). Each patient must be evaluated on a case-by-case basis, with expert medical judgment required for both reaching a diagnosis and determining treatment. There is no set formula for gender transition.

These treatment protocols are outlined in the Standards of Care published by the World Professional Association for Transgender Health (WPATH), which keeps the public up to date on the "professional consensus about the psychiatric, psychological, medical, and surgical management of gender dysphoria."

Q: Can gender-affirming surgery and/or hormone therapy be considered "medically necessary" by doctors for people with gender dysphoria?
A: Yes, doctors have found such treatments to be medically necessary for many people. The AMA's 2008 resolution recognized "an established body of medical research" that "demonstrates the effectiveness and medical necessity of mental health care, hormone therapy, and gender-affirming surgery as forms of therapeutic treatment for many patients diagnosed with [gender dysphoria]." Similar policy statements have been issued by a range of medical organizations, including the American Psychological Association, the American Academy of Family Physicians, the National Association of Social Workers and WPATH.

Courts have repeatedly ruled that these treatments may be medically necessary and have recognized gender dysphoria as a legitimate medical condition constituting a "serious medical need" (see Lambda Legal's victory in *Fields v. Smith*,[3] next page). Courts have also found that psychotherapy alone can be insufficient treatment for gender dysphoria, and that for some people, gender-affirming surgery may be the *only* effective treatment.[4]

Q: Health insurance plans that exclude services related to gender transition often say they are "cosmetic" or "experimental." Is this true?
A: The myth that transition-related care is "cosmetic" or "experimental" is discriminatory and out of touch with current medical thinking. The AMA and WPATH have specifically rejected these arguments, and courts have affirmed their conclusion. For instance, in *O'Donnabhain v. Commissioner*, a case brought by Gay and Lesbian Advocates and Defenders (GLAD), the Internal Revenue Service lost its claim that such

1. AMA Resolution 122, A-08: http://www.uclgbtia.org/AMA-TransInsuranceResolution.pdf **2.** For more information on the Standards of Care: http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf. **3.** *Fields v. Smith*, 2010 U.S. Dist. LEXIS 78914 (E.D. Wis. July 9, 2010) **4.** In re *Heilig*, 372 Md. 692 (Md. 2003)

> **“I got a letter in the mail, saying, ‘We don’t cover this.’”**
>
> **—ROMAN RIMER**

treatments were cosmetic and experimental when a transgender woman deducted her gender-affirming surgery procedures as a medical expense.

Q: Is it true that some health plans won’t cover gender dysphoria but will pay for the same treatments, as long as they are not related to gender transition?
A: Yes: Psychotherapy, hormone therapy, breast augmentation or removal, hysterectomy and a range of other procedures are frequently covered for non-gender-dysphoria-related medical conditions, but are often denied if related to gender transition.

Such exclusions leave no room for individual medical assessments of the kind recommended by the AMA and other professional medical organizations. They also may be unconstitutional because they deny care to a group of people based on who they are.

For people who are incarcerated, courts have called these sorts of blanket policies “deliberate indifference” and ruled that they violate the Eighth Amendment prohibition against cruel and unusual punishment.[6]

Q: Wouldn’t it be expensive for insurance companies to cover transition-related health care?
A: Some employers worry that covering transition-related health care will raise the cost of insurance premiums, but data show that is not the case. While the cost is prohibitive for many individuals, it’s negligible when an insurance plan takes it on because gender dysphoria is negligible when an insurance plan is able to allocate the costs.

For example, San Francisco, which became the first U.S. city to provide insurance coverage for gender-dysphoria-related care in 2001, quickly learned that the change would not cost municipal employees anything at all. After four years, during which time the city paid out only 11 gender-dysphoria-related claims, the surcharge that employees had been paying to cover the policy change was reduced to zero. There simply was no need to take in the extra money, because the cost of covering these claims was so insignificant.[7]

Not treating gender dysphoria, on the other hand, can be quite a strain on the health care system. According to the AMA, “Delaying treatment for [gender dysphoria] can cause and/or aggravate additional serious and expensive health problems, such as stress-related physical illness, depression, and substance abuse problems.”

PRISON
TRANSITIONING BEHIND BARS

People who need transition-related care while in prison are often at the mercy of outmoded treatment policies, on top of being vulnerable to harassment by prisons officials or fellow inmates. **Under these extreme conditions, many inmates injure themselves, some going so far as to “self-treat” by attempting to perform surgery to remove their own genitals.**

But many transgender incarcerated people have been successful in demonstrating their need for health care behind bars by arguing that this lack of care violates the Eighth Amendment’s prohibition of cruel and unusual punishment. In *Fields v. Smith*, for instance, Lambda Legal represented transgender women incarcerated in Wisconsin who had been on hormone therapy for years before the state legislature passed a law in 2006 banning transition-related care for inmates in state prisons. **The withdrawal symptoms and horrible physical and mental effects that inevitably followed this change in policy were devastating to these women.**

A U.S. District Court found in the inmates’ favor in a 2010 ruling that the law violated the Eighth Amendment because “[t]he decision of whether or not certain treatment or a particular type of surgery is ‘medically necessary’ rests with the individual recipient’s physician.” The court also ruled that the Wisconsin law violated the equal protection clause of the Fourteenth Amendment because incarcerated people with gender dysphoria were denied many of the exact same medical treatments given to prisoners with other diagnoses. **The court said transgender people should have the same access as similarly situated non-transgender people to an individual assessment of their medical and psychological needs, as well as to the appropriate treatment options.** In 2011, the 7th Circuit Court of Appeals upheld this ruling, stating that the law violated the Eighth Amendment.

5. *De’Lonta v. Clarke*, 2013 U.S. Dist. LEXIS 122872. **6.** See *Barrett v. Coplan*, 292 F.Supp.2d 281, 285 (D.N.H. 2003); *Houston v. Trella*, No. 04-1393 (JLL), 2006 WL 2772748, * 21 (D.N.J. Sept. 25, 2006); *Bismark v. Lang*, No. 2:02-cv-FtM-29SPC, 2006 WL 1119189, *19 (M.D. Fla. April 26, 2006); *Kosilek v. Maloney,* 221 F.Supp. 2d 156, 186 (D.Mass. 2002). **7.** B. Sears and C. Mallory, *Economic Motives for Adopting LGBT-Related Workplace Policies* (Updated), Los Angeles: The Williams Institute, available at: http://williamsinstitute.law.ucla.edu/research/workplace/economic-motives-for-adopting-lgbt-related-workplace-policies; California Department of Insurance, “Economic Impact Assessment” (2012), available at http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf.

Q: Do some employers and insurance companies cover gender dysphoria?
A: Yes, a growing number of employers—including major firms such as Nike, Microsoft and Google—are leading the way in this area by removing outmoded and discriminatory exclusions of transition-related health care and offering trans-inclusive coverage as part of diversity initiatives. In 2004, only 1% of Fortune 100 companies provided insurance coverage of transition-related health care compared to 56% of Fortune 100 companies in 2012.

For more information, go to http://www.hrc.org/resources/entry/finding-insurance-for-transgender-related-healthcare.

Q: How does the Affordable Care Act protect the rights of people with gender dysphoria?
A: When the Affordable Care Act was enacted, the law's antidiscrimination provisions created an important new tool to combat anti-LGBT and especially anti-transgender discrimination in health care. In a letter dated July 12, 2012, the Office of Civil Rights (OCR) in the federal Department of Health and Human Services (HHS) responded to a letter signed by Lambda Legal and the New Beginning Initiative confirming that the HHS prohibition against sex discrimination "extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity…[and] also prohibits sexual harassment and discrimination regardless of actual or perceived sexual orientation or gender identity of the individuals involved."

This means that transgender and gender-nonconforming individuals cannot be discriminated against in any way by programs or activities administered by HHS or any entity established under the ACA. Complaints can be filed with the OCR, which will investigate such complaints as sex discrimination.

This has prompted a number of states (CA, CO, CT, IL, MD, NY, OR, VT and WA) and the District of Columbia to issue "insurance bulletins" reminding private insurers that it is against state law and the Affordable Care Act (ACA) to allow discrimination against transgender policy holders.

Q: Do Medicare and Medicaid cover gender dysphoria?
A: Yes and no. On May 30, 2014, an HHS review board ruled that transgender people receiving Medicare may no longer be automatically denied coverage for gender-affirming surgeries. This does not affect Medicaid, where coverage rules are primarily at the state level, but five states (CA, DC, MA, OR and VT) do cover transgender medical services, including gender reassignment surgery, as a standard benefit in their government health plans for lower-income and disabled persons.

TIPS
ADVOCATING FOR INSURANCE COVERAGE OF YOUR MEDICAL NEEDS

1. If you are denied insurance coverage for transition-related health care, consider taking these steps:

2. Get a copy of your health insurance policy to see if there is any discriminatory exclusion language. If so, find out what the process is to appeal a denial of coverage. You will likely need to provide written documentation from your doctor that this treatment is deemed medically necessary for you.

   Use official statements from any of the following five medical organizations (links to them online are available at www.lambdalegal.org/publications/trans-insurance) as backup for your argument that transition-related care is not cosmetic or elective and should be covered:

3. American Academy of Family Physicians
   American Medical Association
   American Psychological Association
   National Association of Social Workers
   World Professional Association for Transgender Health

Contact Lambda Legal's Help Desk (toll-free: 866-542-8336 or www.lambdalegal.org/help)

Photo of Roman Rimer © Emily Bryan

DIAGNOSIS?
"GID" IS NOW OFFICIALLY "GENDER DYSPHORIA"

In 2013, gender dysphoria replaced the diagnosis of gender identity disorder (GID) in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), the American Psychiatric Association (APA) manual used by clinicians and researchers to diagnose and classify mental conditions.

The APA explained that "Replacing 'disorder' with 'dysphoria' in the diagnostic label is not only more appropriate and consistent with familiar clinical sexology terminology, it also removes the connotation that the patient is 'disordered.' "

The APA said it was concerned that completely "removing the condition as a psychiatric diagnosis—as some had suggested—would jeopardize access to care… Many of the treatment options for this condition include counseling, cross-sex hormones, gender reassignment surgery, and social and legal transition to the desired gender. To get insurance coverage for the medical treatments, individuals need a diagnosis."

CHAPTER IX

Survival Tips for Trans Youth

Transgender and gender-nonconforming (TGNC) youth face serious legal obstacles, and many endure discrimination and violence on a daily basis in school, while obtaining health care and in the criminal justice system.

The challenges of changing one's name, finding access to hormones or enduring police brutality demands a distinctly adult set of skills and can take a their toll on a young person. If you don't have a safe place to call home, it's difficult to get a handle on the other struggles in your life. TGNC youth have a high rate of homelessness because many can't rely on parental support—whether financial or emotional. Not to mention that mistreatment at school is so common that many drop out.

The fact is, however, that nobody has the legal right to harass you simply because of who you are or are perceived to be. Laws and policies exist at multiple levels to prohibit discrimination based on gender identity or expression. These are generally new or still developing in most states and cities, and they vary widely. Lambda Legal (866-542-8336 or lambdalegal.org/help) tracks these laws and helps advocate on behalf of TGNC people of all ages.

Reaching out to other young TGNC people can also be a big help.

DEFINITIONS

Transgender refers to people whose gender identity, one's inner sense of being male, female or something else, differs from their assigned or presumed sex at birth; ***cisgender*** refers to people whose gender identity is the same as their assigned or presumed sex at birth.

Gender-nonconforming people don't meet society's expectations of gender roles.

MY STORY YOUNG, HOMELESS AND TRANSITIONING

KRYSTAL NEAL

"I left my house when I was 19 and keep trying to make it on my own. I've stayed in shelters where I have been harassed by both gay and straight people. And one time I was walking around the West Village with a friend and some cops asked for our ID. One cop said, 'You have to clear up this thing, John'—my birth name on my ID—in front of other people. It was really embarrassing.

"I decided to transition in November 2010. I had worked at a fast food place for a year and a half but as I transitioned, the changes were starting to show. When I came into work dressed as a woman, I got fired.

"My mother loves me, I know that, but she's also worried about what other people think.

"I want to be a role model for the trans community and show the world we're just people. Living my life as the true me—as Krystal—is not always easy, but I don't think there is any other choice."

FAQ
Answers to Common Questions from Transgender Youth

Q: How do I make sure people call me by the right name and use the right pronoun?
A: You have the right to insist that your school and community use the name and pronoun that reflects who you are—whatever your age. But most people find it useful to back up these changes officially as well.

If you are at least 18 years of age or have parental consent, you can legally change your name—whether you are trans-identified or not. Name change procedures vary slightly from state to state, but it generally involves filing paperwork at a clerk's office, paying a court fee of $100-200, signing affidavits to assure the court you are not changing your name to defraud anyone and then appearing before a judge who will approve the change. The judge's order can then be used to change all your identity documents.

Changing your name is not the same as changing your gender marker on your birth certificate; that is a separate, sometimes complicated process, using different legal channels. Some transgender people wait and change both their name and their gender marker at the same time, but many change their name first. Lambda Legal's *Bending the Mold* has additional information to help with that and can be accessed online at lambdalegal.org/publications/bending-the-mold.

Q: How do I get trans-affirming healthcare?
A: Everyone deserves access to quality health care, regardless of one's ability to pay for it. Some cities have clinics designed to treat transgender youth specifically: for example, Callen-Lorde Community Health Center runs Health Outreach to Teens (HOTT) in New York City; Howard Brown offers a low-income walk-in clinic for LGBT people in Chicago; and Dimensions Clinic offers low-cost health services for queer, transgender and questioning youth in San Francisco. Most state Medicaid programs do not cover transition-related health care, but a growing number of states are lifting these discriminatory exclusions (California, Connecticut, Illinois, Massachusetts, Oregon, Vermont and D.C.) If you apply for Medicaid to cover your transition-related health care and are denied coverage, contact Lambda Legal's Help Desk. Lambda Legal's fact sheet on "Transition-Related Health Care" has more information about how advocates are working to remove discriminatory barriers to trans health care and can be downloaded at lambdalegal.org/publications/toolkits.

No matter where you live, it may be possible to find doctors with transgender patient experience.

Even if you are incarcerated or in foster care you have the right to trans-affirming health care. Lambda Legal successfully claimed in *Rodriguez v. Johnson et al.* that a young transgender woman could not be denied access to her prescription hormone medication. In *Fields v. Smith*, Lambda Legal and the ACLU convinced the court to rule that a blanket ban on health care for incarcerated trans people is unconstitutional.

There is no set age limit for starting on prescription hormones related to transition; some doctors start transgender youth on hormone blockers at the onset of puberty, while others recommend waiting. But doctors need to assess a patient's situation on a case-by-case basis. If you are under 18 years old, you need parental or guardian consent to begin hormone treatment.

Because getting access to hormones can be difficult, some transgender people look for them without a prescription, but illegally trafficked hormones can cause additional health problems and hormone treatment should be monitored.

Q: How can I protect myself from anti-TGNC harassment and violence in school, on the street or by the police?
A: No matter where you live, you are entitled to equal protection under the law, according to the 14th Amendment of the U.S. Constitution. You're also covered under federal hate crimes law, which means that if you experience violence because of your gender identity or expression, the crime may prompt greater police attention and a higher penalty than if you're attacked for some other reason. Some states and regions also have laws specifically protecting TGNC people from discrimination. Even in areas with no such laws, however, you may have legal rights under existing sex discrimination or disability laws.

Schools are supposed to protect you as well. So if you experience physical or verbal violence at school, it is important that it gets reported to the administration, whether by you, a peer or a teacher whom you trust to speak on your behalf. Unfortunately, police are not immune to transgender prejudice, and many young people contact Lambda Legal to report being harassed while lawfully hanging out in public spaces or just walking the streets; officers often make assumptions that something illegal is going on. If you feel you have been targeted, illegally arrested, harassed or attacked because of your gender identity or expression or your race, please call our Help Desk at 866-542-8336 or visit us online at lambdalegal.org/help. You have the right to be yourself in public and not to be targeted by the police simply because of your appearance.

Q: How can I find work?
A: TGNC young people often find themselves needing to be

> **My mother loves me, I know that, but she's also worried about what other people think.**
>
> **—KRYSTAL NEAL**

self-sufficient before their peers do, struggling to make money to survive on the streets or to pay for health care not covered by insurance or by their own families. Yet they are often passed over for jobs because of prejudice about the way they may look. The National Trans Discrimination Survey—data compiled by the National Center for Transgender Equality and the National Gay and Lesbian Task Force in 2009—found that trans people are nearly twice as likely to be unemployed and that the extreme poverty rate for trans people is four times that of the general population. The shortage of options forces many young TGNC people into street economies, including the drug trade and sex work.

Discriminating against workers for not conforming to sex stereotypes and assumptions has frequently been found illegal, however. The Equal Employment Opportunity Commission (EEOC) recently issued a landmark decision holding that transgender employees are covered by Title VII, the federal sex discrimination law. Lambda Legal recently won an important case in Georgia, for instance, on behalf of a transgender woman who was fired for transitioning on the job. For more information about that, see "Workplace Rights & Wrongs," another fact sheet in this series, which can be downloaded at: lambdalegal.org/publications/toolkits.

Another great resource is the Transgender Economic Empowerment Initiative, which helps helps empower and educate transgender job seekers in the SF area through mentoring partnerships with other trans people. Their strategies and resources may be helpful in other parts of the country too. Transgender sex workers may benefit from information in the pamphlet *Taking Care of Yourself*, published by the Sex Workers Education & Advocacy Task Force (SWEAT) available at sweat.org.za.

Age may also be a factor for transgender young people looking for work. If you're under 18, your state may bar it. In most cases, however, you can get a special permit from the Labor Department or a guidance counselor at school.

Q: How do I find a safe place to live?
A: First, remember that you are far from alone in needing shelter. Most transgender youth encounter some trouble at home, whether living with family or not. There are 1.6 million homeless youth in the United States, and studies estimate that 20 percent of them are LGBT-identified. There are very few homeless shelters focusing on the needs of LGBT youth, but one such shelter, the Ali Forney Center, offers housing and a range of services in New York City.

As you may know firsthand, prejudice at shelters and agencies serving homeless youth can be just as difficult as problems with family acceptance. If you are living in a group home, remember that you do have the right to be respected as a transgender person. If you encounter discrimination or mistreatment in a shelter, group home or other residential facility, call our Legal Help Desk at 866-542-8336, or visit us online at lambdalegal.org/help. For information on how to talk to loved ones and work towards acceptance, consider contacting the Family Acceptance Project (familyproject.sfsu.edu).

Q: If I have legal problems, how do I make sure my (criminal or family court) attorney is really advocating for me?
A: You have the right to be treated with dignity and respect in such matters and to have your gender identity respected by your attorney. Check out the American Bar Association's *Opening Doors for LGBTQ Youth in Foster Care: A Guide for Lawyers and Judges* or Lambda Legal's *Getting Down to Basics: Working with Transgender Youth*

NYC LAUNCHES FIRST-OF-ITS-KIND PUBLICATION FOR TGNC CHILDREN AND YOUTH

In 2014, the New York City Administration for Children's Services published *Safe and Respected: Policy, Best Practices, & Guidance for Serving Transgender & Gender Non-Conforming Children and Youth Involved in the Child Welfare, Detention, and Juvenile Detention Systems*. This first-of-its-kind, comprehensive guide seeks to provide culturally competent care for TGNC children and young people in New York.

Created with the input of advocates for LGBTQ youth, *Safe and Respected* discusses best practices as well as strategies and common missteps to avoid when working on issues that TGNC children and young people encounter in their daily lives. With studies indicating that TGNC youth are disproportionately represented in foster care and juvenile justice settings, *Safe and Respected* discusses a variety of relevant topics such as use of language, privacy and disclosure, personal grooming, and affirming and appropriate gender placements.

(available at lambdalegal.org/publications) as well as information and tools to share with your advocate (available at lambdalegal.org/publications/toolkits). The attorneys at Lambda Legal are willing to share their expertise and research on these issues with other attorneys who have similar cases. You can call our Help Desk directly, but also encourage your attorney to call us at 866-542-8336, or visit us online at lambdalegal.org/help.

HEY, TGNC YOUTH OF COLOR! CALL OUR HOTLINE

Lambda Legal's toll-free hotline for LGBT teens is 1-866-LGBTeen (1-866-542-8336).

Resources

SOME USEFUL GUIDES FOR TGNC YOUTH

BENDING THE MOLD: This Lambda Legal publication helps you make your school a safer place, whether you are transgender or gender-nonconforming, questioning or an ally. lambdalegal.org/publications

GETTING DOWN TO BASICS: This Lambda Legal publication offers practical tips and information to ensure that LGBTQ young people in care receive the support and services they deserve. lambdalegal.org/publications

HIDDEN INJUSTICE: This Equity Project report was created to promote leadership and provide guidance regarding lesbian, gay, bisexual and transgender (LGBT) youth in the juvenile justice system.

A PLACE OF RESPECT: This National Center for Lesbian Rights guide deals with group care facilities that serve transgender and gender-nonconforming youth.

TRANSGENDER RIGHTS TOOLKIT: A LEGAL GUIDE FOR TRANS PEOPLE AND THEIR ADVOCATES:

See a complete list of the 13 fact sheets now inside (including the one you are reading) and download some or all at lambdalegal.org/publications

TRANSITIONING OUR SHELTERS: This National Gay and Lesbian Task Force publication offers specifics strategies for making homeless shelters safe for transgender people.

Photo of Krystal Neal © Amos Mac

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to ***www.lambdalegal.org/help***.

CHAPTER X

Transgender College Students

This fact sheet is a joint publication of Lambda Legal and the Consortium of Higher Education LGBT Resource Professionals.

Everyone deserves to receive an education free from harassment, discrimination and violence. Yet these problems commonly plague transgender students pursuing a university degree, sometimes even before they set foot on campus.

It all starts with the application. Transgender students' applications can be subject to extra scrutiny, especially at single-sex or religiously affiliated institutions. Transgender students are often denied admission altogether when the institutions fail to have systems in place that recognize students' identity, particularly non-binary identities.

For transgender students who are admitted, campuses routinely fail to affirm their identities and deny them appropriate housing, restrooms and locker rooms. Changing the legal name and gender marker on one's student ID card, class rosters, transcript, diploma and other educational records is unnecessarily complex and time-consuming at some institutions—and expressly prohibited on most campuses.

The effect of such policies is to block equal access to education.

All this persists amid a general climate of hostility. Nineteen percent of respondents to the National Transgender Discrimination Survey (available at thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf) who identified as transgender or gender-nonconforming (TGNC) while in higher education were refused gender-appropriate housing, and 5% were refused campus housing altogether.

Some of that mistreatment comes from the very campus security officers appointed to protect students. In a 2012 Lambda Legal survey, *Protected and Served?* (lambdalegal.org/protected-and-served), 20% of TGNC respondents ages 18-24 described the attitude of campus security officers toward them as "hostile."

These obstacles add up, often to the point where transgender students feel unable to complete their education. In the survey *2010 State of Higher Education for LGBT People* (campuspride.org/store/products/2010-state-of-higher-education-for-lgbt-people/), more than a third of TGNC students said that they seriously considered leaving their institution because of the challenging climate. While some campuses have become safer and more welcoming for transgender students, it can't be said that they enjoy equal educational opportunities.

This fact sheet is intended to inform transgender students of their rights on campus and to show what advocates are doing to help make colleges and universities more affirming of, and welcoming to, transgender students. It is also designed to help students navigate campus challenges and advocate for better policies.

MY STORY MY ALMA MATER LET ME DOWN

LANDON "LJ" WOOLSTON

"I went to my alma mater to change my gender marker in their system from female to male. After seeing my new ID, they thought my gender was just a mistake in their system. They quickly updated it and I left.

"They chased me down in the parking lot and said they'd made a mistake. They asked me to come back. I provided my ID again, but was told I needed a court order. They kept looking at their records, then back at me, just trying to figure me out. I felt like I was naked.

"The supervisor threatened to invalidate my degree if I didn't comply with procedures. They even asked what gender my birth certificate showed. I told them this felt like they were asking me to drop my pants! A campus police officer was then called to escort me out of the office.

"I emailed everyone, including the university president. The following day, I got a call that my file was being updated. They were 'making an exception' for me."

This chapter produced in partnership by:

Lambda Legal
making the case for equality

CONSORTIUM OF HIGHER EDUCATION LGBT RESOURCE PROFESSIONALS

FAQ

Answers to Common Questions from Transgender College Students

Q: Does federal law protect me as a transgender college student?

A: Yes, Title IX of the 1964 Civil Rights Act prohibits discrimination on the basis of sex. The U.S. Department of Education (DOE) has stated that Title IX's prohibition of sex discrimination encompasses gender identity. The U.S. Department of Justice (DOJ) and the DOE affirmed that transgender students should not be singled out to use a separate, designated restroom or made to room separately (see "The Federal Government Protects Trans Students" on page 42). They must be treated in accordance with the student's gender identity for all purposes. That means transgender women should be treated like cisgender women, and transgender men must be treated like cisgender men.

This applies to transgender students in K-12 as well as at colleges and universities.

Also, the Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student educational records and also gives current and former students the right to amend those records to match their legal documents if they are "inaccurate, misleading, or in violation of the student's rights of privacy." Once a student reaches 18, their parents do not have access to these records unless the student grants permission. (For more information, see "A Transgender Advocate's Guide To Updating and Amending School Records" at lambdalegal.org/publications.)

Q: What state or local laws protect me?

A: Some jurisdictions outlaw discrimination on the basis of sex and/or gender identity in public accommodations, which includes public schools and other educational institutions. Many states also have anti-bullying laws, such as the Dignity for All Students Act (DASA) in New York and California's School Success and Opportunities Act. These laws state that a student's gender identity must always be respected, which is especially important in single-sex restrooms and single-sex sports.

Two recent K-12 school victories in Maine and Colorado have set the stage for how students at all levels should be treated at all educational institutions. These involved transgender girls who were initially denied access to girls' restrooms; both states have prohibitions on such discrimination, but the schools argued that these didn't apply.

In January 2014, the Maine Supreme Court found that singling out a transgender student and forcing her to use a restroom separate from cisgender girls was discrimination under Maine state law. The Colorado ruling came in 2013, when that state's Department of Civil Rights found that forcing a six-year-old student to use the nurse's restroom was discrimination on the basis of gender identity—and that telling her to "disregard her identity while performing one of the most essential human functions constitutes severe and pervasive treatment, and creates an environment that is objectively and subjectively hostile, intimidating or offensive."

Q: Can a religious institution discriminate against me because I am transgender?

A: Educational institutions that receive federal funding are prohibited by Title IX from discriminating on the basis of sex, which includes gender identity. The law does, however, include a loophole for religious-based schools to claim exemption. In 2014, the DOE granted such exemptions to three colleges: George Fox University in Oregon, Spring Arbor University in Michigan and Simpson University in California.

Advocates are very concerned about the increasing use of religious exemptions to avoid antidiscrimination protections for LGBT people and other marginalized groups—a tactic highlighted in June 2014 in the Supreme Court's *Hobby Lobby* ruling targeting reproductive rights.

Q: Can a single-sex college reject my application based on the fact that I'm transgender?

A: Title IX allows certain kinds of educational institutions to admit students of only one "sex," including all-women's colleges. In December 2014, the DOE issued its third official guidance on this issue, this time affirming that "All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX. Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes." This applies to single-sex institutions, as well. Some colleges, including Mills, Mount Holyoke and Simmons, have created policies that are specifically inclusive of transgender students. If you or someone you know has been rejected on the basis of gender identity, please contact Lambda Legal's Help Desk at lambdalegal.org/help or (866) 542-8336.

> **They kept looking at their records, then back at me, just trying to figure me out. I felt like I was naked.**
>
> **—LANDON "LJ" WOOLSTON**

Q: As a transgender student, do I have the right to be placed in campus housing according to my gender identity?
A: Yes, you have that right as long as your college or university is subject to Title IX and hasn't specifically exempted itself from this requirement. You should know that institutions frequently use the gender marker on the application to inform campus records and practices. Find out if your college or university offers gender-inclusive housing as an option; this is particularly important for gender-nonconforming (GNC) students. Some state nondiscrimination laws also protect this right. If you or someone you know has been denied gender-appropriate housing, please contact Lambda Legal's Help Desk at lambdalegal.org/help or (866) 542-8336.

Q: As a transgender student, do I have the right to use restrooms and locker rooms on campus in accordance with my gender identity?
A: Yes, your restroom and locker-room rights are much like your housing rights: You are protected if your college or university is subject to Title IX and hasn't specifically exempted itself. You might also be protected under state or local nondiscrimination laws. Find out if your institution has gender-inclusive (not single-sex) restrooms; these can be particularly important for GNC students. (For more information, see the Trans Policy Clearinghouse (TPC) at campuspride.org/tpc/.) If you or someone you know has been denied gender-appropriate restroom use, please contact Lambda Legal's Help Desk at lambdalegal.org/help or (866) 542-8336.

Q: What should I do to change the name or gender marker on my student ID, transcript or diploma?
A: First, check to see if your college or university already has a procedure in place for allowing name and gender marker changes on student records. More than a hundred institutions now allow students to indicate their chosen name on school records regardless of whether they have legally changed their name. Others require you to legally change your name and gender marker on other documents, such as your state ID, passport or birth certificate, before they will amend certain educational records. (For more information, visit the website of the Trans Policy Clearinghouse (TPC) at campuspride.org/tpc/.)

If your campus does not have a stated procedure for allowing name and gender marker changes, or if you do not or cannot meet the requirements of existing policy, the Registrar's Office may be willing to work with you to change your educational records. In approaching the Registrar, you may want to enlist the support of an ally such as a staff member, faculty or ideally an LGBT resource professional. You may also want to bring some helpful materials, including Lambda Legal's Transgender Rights Toolkit (lambdalegal.org/publications/trans-toolkit), in order to help your school understand how important it is to be able to update your educational records.

If an informal approach is unsuccessful, we recommend sending administrators a letter (such as this one: lambdalegal.org/sites/default/files/ferpa_generic_redacted_letter.docx) that outlines the legal and practical reasons why your educational documents should be amended.

Whether you visit in person or send a letter, consider citing FERPA, the federal law that protects the privacy of student educational records and also gives current and former students the right to amend those records to match their legal documents.

IN THE NEWS

THE FEDERAL GOVERNMENT PROTECTS TRANS STUDENTS

Even before the U.S. Department of Education (DOE) clarified for the third time in 2014 that discrimination based on gender identity in schools violates Title IX of the 1964 Civil Rights Act, transgender students were successfully making that argument.

On July 24, 2013, the U.S. Department of Justice (DOJ) resolved a settlement with a California school on behalf of a twelve-year-old transgender boy who was told to use a restroom in the nurse's office instead of the boy's restroom and locker room, and told he could not room with the cisgender boys on a field trip. The settlement required the school district to take a number of steps to ensure that the student will be treated similarly to cisgender boys, including using the multi-stall restroom and locker room.

The student had returned to middle school after transitioning from female to male and was forced to use a separate restroom than other students. District officials also separated him for other activities. This treatment made the student the target of awkward questions and teasing that interfered with his ability to focus at school.

The 2013 settlement requires the Arcadia Unified School District to grant the student access to the same facilities as any other male student; develop transgender-inclusive nondiscrimination policies; put its staff through antidiscrimination trainings; and undergo monitoring and reporting. The agreement also involved a clarification from the DOE and the DOJ that sex discrimination in schools includes discrimination based on "gender identity, gender expression, and nonconformity with gender stereotypes."

Then, on October 14, 2014, the federal Office of Civil Rights (OCR) approved a resolution agreement in another California case involving a transgender girl who had complained of gender-based peer harassment. Her settlement with the Downey Unified School District affirmed the student's right to use sex-designated facilities "for female students at school… consistent with her gender identity."

Both settlements are great examples of how transgender students, whether K-12 or in college, can exercise their rights under Title IX to prevent their schools from discriminating against them. They also show that the government is receptive to these kinds of complaints.

Best Practices for Supporting Transgender Students

ADAPTED FROM THE TRANS* POLICY WORKING GROUP OF THE CONSORTIUM OF HIGHER EDUCATION LGBT RESOURCE PROFESSIONALS (HTTP://TINYURL.COM/BESTPRAC4TRANS)

October 2014

While schools vary in their ability to implement all of these recommendations and in the resources that they can offer, these practices are what institutions should strive for in addressing the needs of transgender students.

GENERAL POLICIES

DEVELOP AND PUBLICIZE A TRANS-SUPPORTIVE POLICY THAT RECOGNIZES AND RESPECTS THE GENDER IDENTITY OF THE STUDENT. In addition to a general policy, each department (including, but not limited to: Admissions, Registrar, Residential Life, Campus Facilities, Health Center and Fraternities and Sororities) should adopt a trans-supportive policy. The policy should be easily accessible on the school's website. The school and each department should designate an administrator as a point person responsible for enforcing these policies.

Include "gender identity and expression" explicitly in the institution's general nondiscrimination policy. Or clarify existing protections on the basis of sex to include gender identity just as the federal government has done. (For ex-ample, the Office of Personnel Management has clarified that its existing nondiscrimination protections because of sex include gender identity; see "Workplace Rights and Wrongs," another fact sheet in this Transgender Rights Toolkit series, at lambdalegal.org/publications/toolkits.) Include anti-trans acts in harassment and bias incident policies in accordance with campus judicial enforcement.

Before asking for gender identity, critically examine if a student's gender is really needed on a document. For example, is gender identity relevant to a student's participation in a career center event?

Allow students to designate their chosen name (even if distinct from their legal name) on all electronic and hard copy documents (i.e., admissions and matriculation records, medical records, class rosters, transcripts, ID cards and diplomas). In accordance with FERPA, students should be allowed to change their legal name and gender marker upon request (i.e., without a letter from a therapist or doctor and without the need to change other documents). Policies and procedures related to changing names and gender markers should be easily accessible on the school's website.

Suggested format for requesting student

SELF-IDENTIFICATION:

GENDER _____

Or, when multiple-choice format is necessary:

GENDER *(Choose all that apply)*

- ☐ WOMAN
- ☐ MAN
- ☐ TRANS OR TRANSGENDER (PLEASE SPECIFY):

  _____
- ☐ ANOTHER IDENTITY (PLEASE SPECIFY):

  _____

Each department should adopt an equitable process for hiring, training and maintaining trans-identified and trans-knowledgeable staff members. Staff diversity efforts should explicitly include transgender people.

Staff training for all departments should require cultural competency on transgender policies and issues to ensure workplace equality and fair treatment of students and staff.

HOUSING POLICIES

DEVELOP AND PUBLICIZE A TRANS-SUPPORTIVE HOUSING POLICY, WHICH STATES THAT:

1. Students who inform the college that they are trans in a timely manner will be housed in keeping with their gender identity; and
2. Every attempt will be made to give trans students safe and comfortable housing assignments.

Trans* is often (but not universally) used to include people who identify as non-binary trans as well as transgender, transsexual, trans men, trans women and other identities not itemized.

ESTABLISH A GENDER-INCLUSIVE HOUSING (GIH) OPTION THAT:

1. is available for both new and returning students;
2. is separate from an LGBTQ-themed floor;
3. is open to all students, not just to trans students;
4. is offered in different parts of campus and, if possible, in different types of housing (doubles, suites, apartments); and
5. includes gender-inclusive restrooms/showers (see below).

RESTROOM/LOCKER ROOM

HAVE A CAMPUS RESTROOM AND LOCKER ROOM POLICY THAT APPLIES TO ALL BUILDINGS (INCLUDING HOUSING), WHICH ALLOWS INDIVIDUALS TO:

1. use facilities that correspond to their gender identity; or
2. utilize restrooms that are designated gender-neutral/gender-inclusive (see below).
3. Create gender-inclusive restrooms (e.g., single-user, lockable restrooms that are labeled as "all gender restrooms" or simply as "restrooms") and private showers in all renovated and newly constructed residence halls. Offer more privacy in locker rooms for all students where possible.
4. Have an online list/map of all gender-inclusive restrooms across campus.
5. For gender-inclusive restrooms, use a sign that avoids the male and female stick figures.

HEALTH CARE POLICIES

If applicable to your college or university, remove discriminatory exclusions for transgender health care in student and staff insurance plans to ensure equal coverage for medically necessary care.

Regularly train physicians so that they can provide trans-specific health care including: initiating hormone treatment, writing prescriptions for hormones and monitoring hormone levels for transitioning students.

Have at least one Counseling Center therapist who has the training and experience to be able to write letters for transitioning students to access hormones. Develop and publicize a list of area therapists who can provide trans-supportive gender therapy for students who are transitioning or who are struggling with their gender identity.

Offer a support group for trans and gender-nonconforming students.

Have prescriptions and lab orders written in such a way that the name a student uses is called out at the pharmacy and lab.

Appoint a patient advocate or have a visible procedure for trans students (as well as other students) to report concerns and instances of poor treatment.

FRATERNITY/SORORITY POLICIES

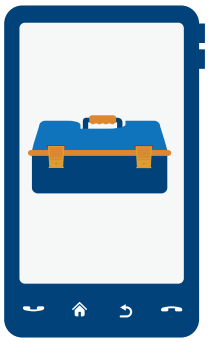
If applicable to your college or university, develop and publicize a fraternity and sorority policy that includes transgender students by clarifying that sex is defined as a person's gender identity. This policy should state that the college will always recognize and respect the stated gender identity of the student.

SPORTS POLICIES

DEVELOP POLICIES THAT ALLOW TRANSGENDER STUDENTS TO PARTICIPATE IN SINGLE-SEX SPORTS IN ACCORDANCE WITH THEIR GENDER IDENTITY.

Model policy from U Mass Amherst: *"When an activity makes a gender designation, an individual who has transitioned to a different gender can participate in the division of the individual's current gender. If an individual is in the process of transitioning to a different gender, participation in a particular gender designated activity will be handled on a case-by-case basis."*

Updated May 2015



FOR MORE INFORMATION:
Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3919. If you feel you have experienced discrimination, call our Legal Help Desk toll-free at 866-542-8336 or go to ***www.lambdalegal.org/help***.

This chapter produced in partnership by:

Lambda Legal
making the case for equality

CONSORTIUM OF HIGHER EDUCATION LGBT RESOURCE PROFESSIONALS

CHAPTER XI

Trans Aging: We're Still Here!

It's not easy getting older, but transgender and gender-nonconforming (TGNC) people have especially good reasons to know their legal rights as they enter their Golden Years. The discrimination and violations of physical privacy that plague most TGNC people when they are younger become more and more likely with age, especially with increased reliance on the health care system.

In a 2011 study[1] among 6,450 transgender adults of all ages, nearly one-fifth reported being refused care outright by medical providers, with even higher rates for transgender people of color. Fifty percent said they had to take it upon themselves to teach their medical providers about transgender care. This is not to mention all those who had their needs ignored, whether denied hormone therapy or some other medical need. Or people whom nurses refused to bathe—or even touch. In a Lambda Legal survey report, *When Health Care Isn't Caring* (lambdalegal.org/publications), eight percent of TGNC participants reported physically rough or abusive treatment from health care providers.

By 2030, the LGBT population over age 65 is expected to grow to as many as 4.7 million people.[2] It's hard to say how many of those are TGNC, but we do know that LGBT older adults are twice as likely to live alone as their heterosexual counterparts and more than four times as likely to have no children.[3] This reality means that the sort of informal caregiving often assumed to be in place for older adults may not be there for LGBT individuals as they age. And studies show that few heath care professionals are competent to meet the needs of the aging transgender population.

The good news is that there are laws in place that protect older transgender people against discrimination in health care and housing. And there are documents to sign, such as wills, powers of attorney and health care proxies that can help you retain power over your decision-making as you age. Knowing your rights can make a big difference as you navigate through issues of housing, health care and life planning.

This fact sheet offers an overview of some of the issues facing transgender older adults. If you or someone you know has been discriminated against in any way for being TGNC, please contact Lambda Legal by calling our Legal Help Desk toll-free at 866- 542-8336 or going to lambdalegal.org/help-form.

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1. See National Gay and Lesbian Task Force & National Center for Transgender Equality, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, available at www.endtransdiscrimination.org/report.html. **2.** See David Singleton, AARP.org, "Wisdom of the Elders: AARP and SAGE" (2009), available at www.aarp.org/politics-society/rights/info-06-2009/wisdom_of_the_elders_aarp_and_sage.html. **3.** See SAGE & National Academy on an Aging Society, *Public Policy & Aging Report: Integrating LGBT Older Adults into Aging Policy & Practice* (2011), available at http://www.sageusa.org/resources/publications.cfm?ID=27.

MY STORY STIGMA AND FEAR STILL HAUNT MY GENERATION

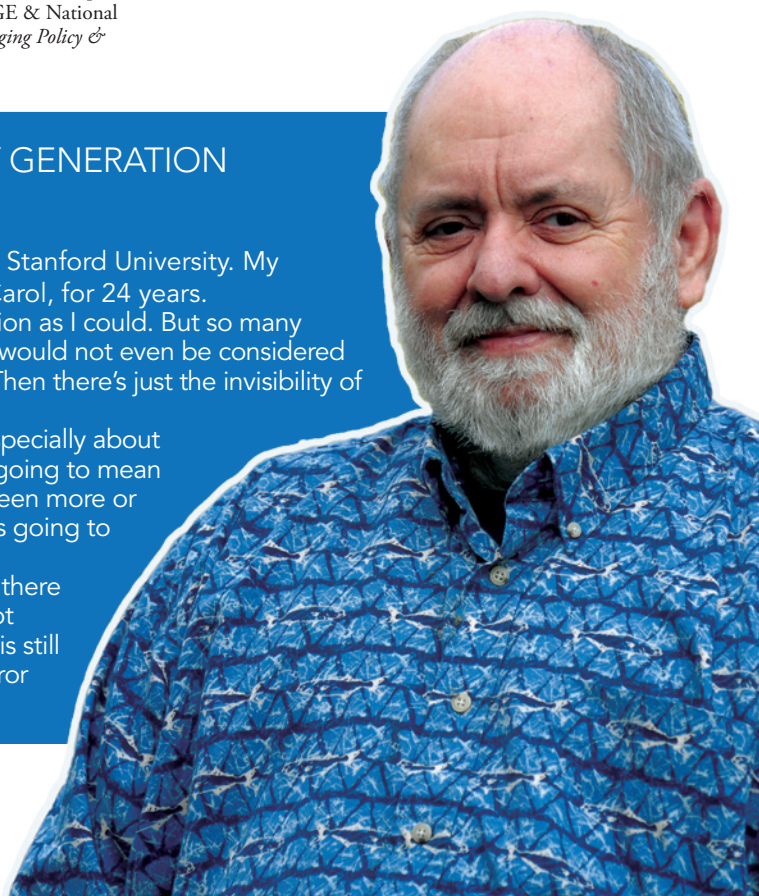
JUDE PATTON

"In 1971 I started hormones, and I had surgery in '72 and '73 at Stanford University. My family and friends were very supportive. I've been with my wife, Carol, for 24 years.

"I've kept contact with as many transgender people in my generation as I could. But so many never came out because of the stigma. Also, in the old days people would not even be considered a viable candidate for [medical] transition if they did not go stealth. Then there's just the invisibility of aging.

"Transgender people who are aging worry about privacy issues, especially about their bodies— whether or not they've had surgery—and what that's going to mean when they're in a nursing home: 'What am I going to do when I've been more or less private for all these years and then my body is exposed?' 'What's going to happen to me as a result of other people's ignorance?'

"I'm still working because I have to: I didn't go to college because there was no college that I could get into [before I transitioned] that did not have a requirement that I wear a dress. I'm very lucky that my health is still good and I have a supportive doctor—I have certainly heard the horror stories."



FAQ

Answers to Common Questions from Transgender Seniors

Q: I just entered a nursing facility and they're refusing to give me the hormone therapy that I have been taking for years. Are they allowed to do that?
A: It's definitely a violation of your rights under the Federal Nursing Home Reform Act (FNHRA) to be denied necessary care and appropriate treatment (see the sidebar "Nursing Home Rights" on the next page for more about the FNHRA). Doctors have found transition-related health care to be medically necessary for many people; in 2008, the American Medical Association passed a resolution recognizing "an established body of medical research" that "demonstrates the effectiveness and medical necessity of mental health care, hormone therapy, and gender-affirming surgery as forms of therapeutic treatment for many patients…" For a list of statements from medical professional associations supporting the medical necessity of transition-related health care, go to www.lambdalegal.org/publications.

Also, courts have repeatedly ruled that transition-related health care, including hormone therapy, is medically necessary when a doctor deems it so for an individual.

In 2011, in *Fields v. Smith*[4], a Federal Appeals Court affirmed transgender prison inmates' rights to transition-related health care while incarcerated. For more about transgender health care rights, see "Transition-Related Health Care," also part of this Transgender Rights Toolkit, at lambdalegal.org/publications/toolkits.

Q: Staff at my nursing facility are rude to me because I'm transgender and do not allow me to dress according to who I am. Are they allowed to do that?
A: No. Under the FNHRA, "[a] nursing facility must protect and promote the rights of each resident." This protection includes the right of residents to a "reasonable accommodation of individual needs and preferences." Facilities must also "attain or maintain [a resident's] highest practicable physical, mental, and psychosocial well-being."

It's a nursing facility's job to ensure that you are treated with dignity and respect while in its care. As for your clothes, gender transition is now widely recognized by the medical community as benefiting a transgender person's psychological well-being, and one critical component is being able to live and be seen and treated by others in a manner consistent with one's gender identity.[5]

Q: What if I am denied housing because I'm transgender?
A: The Fair Housing Act (FHA) is a federal law that protects you from being denied housing, public or private. What's more, the U.S. Department of Housing and Urban Development (HUD) stated in 2012 that gender identity discrimination is prohibited in its programs.[6] If such a thing were to happen to you, it would also be a good idea to find out if your state or municipality has a nondiscrimination law covering gender identity and expression, because such laws cover housing, including nursing facilities.

Q: Can I decide who can and can't visit me in a hospital or nursing facility?
A: Yes. Since 2010 federal regulations empower patients in hospitals to choose their own visitors. Also, hospitals are barred from discriminating against visitors based on race, ethnicity, religion, sex, gender identity, sexual orientation or disability. In addition, the FNHRA specifies that residents of nursing facilities have the right to designate who they want to visit them. Hospitals and nursing facilities are required to inform patients and residents of these rights. There are no federal standards for assisted-living facilities, but state laws generally include some right to have visitors, although the extent of such rights varies from state to state.[7]

Q: My nursing home roommate is verbally abusive because I'm transgender. Am I allowed to get a replacement?
A: You don't have to tolerate abuse from either roommates or staff. Under the FNHRA, a nursing home resident has the right "to be free from physical or mental abuse" and "to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents." The nursing home is also prohibited from forcibly isolating you from other residents.

Q: How can I make sure that I have the most possible control over my future as a transgender older adult?
A: If you don't already have a last will and testament, medical and financial power of attorney and a living will, getting those signed and distributed to the right people should be your first step. Also, if you have any special wishes about your funeral or disposition of your remains, it's a good idea to write those

4. *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011). **5.** See WPATH Standards of Care at www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926 **6.** See HUD's guidelines, available at http://portal.hud.gov/hudportal/ HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination. **7.** See "Stories From the Field," available at www.lambdalegal.org/publications.

> **"What's going to happen to me as a result of other people's ignorance?"**
>
> **—JUDE PATTON**

down and include them with the other documents.

If you are married or have kids, talk to a lawyer or estate-planning expert to make sure your wishes for your family are clear and can't possibly be reversed by someone trying to intervene if you die or become incapacitated.

For more information about medical and financial planning, check out Lambda Legal's "Take the Power: Tools for Life and Financial Planning" at lambdalegal.org/publications/toolkits.

Q: I struggled for years over my gender identity and now I'm finally ready to transition. Should I be worried that I'm too old for hormones or surgery or that my transition won't be covered by insurance?

A: In 2014, a U.S. Department of Health and Human Services (HHS) review board ruled that the National Coverage Determination (NCD) policy of denying Medicare coverage of all transition-related surgery is not valid and that it can no longer be used to deny claims for Medicare coverage of transition-related surgery. This overturned a policy that had banned coverage for transition-related surgery for nearly 50 million beneficiaries. What the ruling means is that if you rely solely on Medicare for health coverage, as many transgender seniors do, you will now have access to the procedures that your doctors deem medically necessary.

Beyond its direct impact for Medicare recipients, this ruling also marks a broader victory for transition-related health care. Currently, very few insurance companies and employers, private or public, cover gender-affirming surgery in their health insurance plans despite both the medical consensus on the necessity of this care for transgender people and the data showing that insurance companies that do cover gender-affirming surgery are able to do so at minimal cost. HHS's ruling adds to the increasing recognition of the importance of individualized assessments of the health needs of transgender people, removing a discriminatory obstacle to equal and appropriate health care.

NURSING HOME RIGHTS
THE FEDERAL GOVERNMENT PROTECTS YOU

The Federal Nursing Home Reform Act, enacted in 1987, is a comprehensive federal statute that creates a minimum set of standards of care and rights for people living in Medicare- and/or Medicaid-certified nursing facilities.

The FNHRA guarantees these rights:

- Staff must provide "care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being."
- Staff must maintain patients' capability to perform daily life functions, such as bathing and dressing, unless health problems require changes.
- Patients have "free choice" to choose a physician and to be fully informed about care and treatment.
- Patients must be free to "voice grievances…without discrimination or reprisal" for exercising their rights under the FNHRA.

FLYING SOLO

LAMBDA LEGAL VICTORY IN DEATH BENEFITS CASE

In 2014, Lambda Legal successfully appealed the denial of Social Security survivor benefits on behalf of a 92-year-old transgender woman, Robina Asti, a World War II veteran and flight instructor. The Social Security Administration denied Robina's claim stating that she was "legally male" at the time of her marriage to her spouse, disregarding the fact that Robina had been legally recognized as a woman for over three decades by state and federal agencies, including Social Security itself. Robina's story and video brought international attention to transgender seniors and helped spark a policy change for the Social Security Administration. Robina was featured in People magazine and was named one of the Advocate's "Prime Time 25: LGBT Seniors Making a Difference."

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Resources

SOME USEFUL GUIDES FOR TGNC SENIORS

In 2011, Lambda Legal, along with several other organizations, published "Stories From the Field: LGBT Older Adults in Long-Term Care Facilities" (available for download at lambdalegal.org/publications.

Other organizations offering resources for TGNC seniors include:

AARP PRIDE
aarp.org/relationships/friends-family/aarp-pride

THE AIDS INSTITUTE: HIV/AIDS AND AGING AWARENESS
theaidsinstitute.org/programs/education/national-hivaids-and-aging-awareness-nhaaa

AMERICAN SOCIETY ON AGING: LGBT AGING ISSUES NETWORK
asaging.org/education/5

FORGE
forge-forward.org

GRIOT Circle
griotcircle.org

LEADING AGE: LGBT
leadingage.org/LGBT.aspx

NATIONAL CENTER FOR LESBIAN RIGHTS: ELDER LAW
nclrights.org/our-work/elders/

NATIONAL COALITION FOR LGBT HEALTH
healthhiv.org/

NATIONAL RESOURCE CENTER ON LGBT AGING
lgbtagingcenter.org

OLD LESBIANS ORGANIZING FOR CHANGE
oloc.org

SAGE
sageusa.org

TRANSGENDER AGING NETWORK
forge-forward.org/aging

Photo of Jude Patton © Scott Terrell

CHAPTER XII

Transgender Parents

Thousands of children around the United States have parents who are transgender, an umbrella term used to describe people whose gender identity—one's inner sense of being male, female or something else—differs from the sex assigned or presumed at birth.

These parents are like anyone else, whether married, living with partners or single, and whether adopting, giving birth, fostering or step-parenting. Indeed, while the fact that they're transgender is often what others focus on first, transgender parents are generally more preoccupied with diapers, homework or getting dinner on the table. They are parents first.

Good parenting is good parenting, regardless of gender identity. A common misconception (often exploited in custody disputes) is that transitioning—living and presenting oneself consistent with one's gender identity in everyday life—is a selfish act rather than a difficult journey that is not embarked upon casually. Transitioning is more accurately understood as a step toward the alignment of a person's mind and body, and as such can benefit everyone affected, including children. And that's not to mention the value to children of learning about human diversity and tolerance.

Nonetheless, judges and adoption agencies sometimes try to stop transgender adults from bringing children into their lives and even try to remove them from their homes. Misperceptions and prejudices about transgender people fuel many custody disputes. High emotions are often in play when a cisgender co-parent is unable to accept a transgender parent's transition and files for divorce. Sometimes an ex-partner questions a transgender parent's suitability in court in order to try to change a custody arrangement.

Growing knowledge about this issue continues to benefit trans parents' efforts to protect parent-child relationships, but the courts still have a long way to go.

This Lambda Legal fact sheet addresses some basic questions about the issues transgender parents face during custody and visitation disputes. It also offers practical advice and resources for transgender parents and their families seeking to protect themselves against challenges to their parental rights.

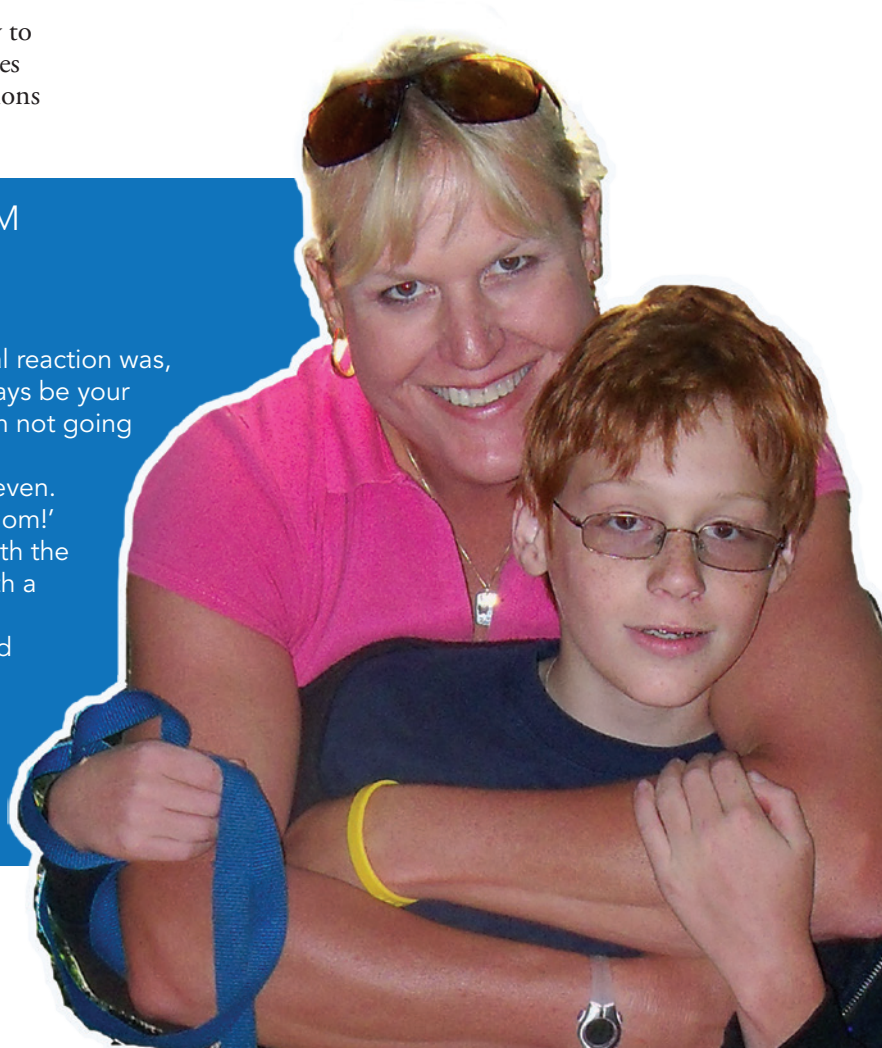
OUR STORY "I HAVE A DAD AND A MOM IN THE SAME BODY"

BRIANNA HARRIS, AND AIDAN HARRIS

"When I came out to Aidan when he was six, his initial reaction was, 'But I'm gonna miss my Dad!' And I told him, 'I will always be your dad. No matter what happens we can't change that. I'm not going anywhere.'

"The first year he marched at Pride with me he was seven. He made up a T-shirt that said 'I'm proud of my trans mom!' On the front, he drew a stick figure in a baseball cap with the words FROM THIS, and on the back it said TO THIS with a stick figure in a dress.

"Only on a few occasions that I'm aware of has he had trouble in school, but he's always handled it great. When he was in third grade, a fifth-grader made some comment about his dad wearing dresses. He just turned to the kid and said, 'Well, you're just jealous that I have a dad and a mom in the same body."



FAQ
Answers to Common Questions about Parenting

Q: Do children need certain kinds of gender-specific parenting?
A: It doesn't matter what gender your parents are. Research shows that the most important influences on a child's happiness and development are the quality of the child's relationship with a parent or parents, the quality of parents' relationship with each other or other adults and economic factors. Having a single parent or having two of the same gender doesn't leave children any less well-adjusted than having parents who are a male and female couple.

A parent's "gender conformity"—how well they conform to society's expectations of gender roles—is also irrelevant for evaluating the "best interests of the child," the standard that courts use to determine custody issues. Studies on gender-nonconforming parents (such as masculine women or feminine men, for instance) have found that when traditionally gendered mom and dad parenting roles are reversed or reshuffled—or even combined in the caretaking of a single parent—there is no adverse effect on the child.

Q: Isn't a transgender parent's transition sometimes very upsetting to a child?
A: Children tend to have fewer preconceived notions about gender than adults do. Experiences vary for children with a transgender parent who transitions. Studies have shown that preschool age and adult children generally adapt better to a parent's transition, while adolescent children tend to face more challenges.

Extra factors come into play as well, however, such as the fact that it can be tricky finding someone to talk to who has gone through the same experience. There are a limited number of resources available to transgender parents and their families. (See "Coming Out to Your Child," next page.)

Also, when a married parent transitions, the change may cause some conflict in the marriage itself, a situation that is bound to affect the children. This is often made much worse if the cisgender parent is openly hostile about the transition—although that is by no means always the situation.

A recent national study found that 58% of transgender parents found their relationships with their children to be the same or better and 13% found that some things were better and some things were worse (National Transgender Discrimination Survey). There are many events in the lives of parents and children that may cause difficult emotional responses, and it is the job of parents and families to help children deal with them in a healthy way.

Q: Are transgender parents likely to influence the gender identity or sexual orientation of their children?
A: No, there is no evidence of any greater tendency for children of transgender parents to be transgender themselves, nor to be gay, lesbian or bisexual. A wide range of studies dating back to the 1970s have measured no such differences.

Q: Can a court change custody or visitation arrangements based purely on the fact that a parent is transgender?
A: Courts are generally only allowed to base custody or visitation rulings on factors that directly affect the "best interests of the child." If a transgender parent's gender identity can't be shown to hurt the child in some way, contact should not be limited, and other custody and visitation orders should not be changed because of a parent's transition.

Many courts have upheld this principle and have treated transgender custody cases like any other child custody determination—by focusing on standard factors such as parental skills. Judges have quite properly recognized the capabilities of transgender parents.[1] In *Mayfield v. Mayfield*, for instance, the court upheld a transgender parent's shared parenting plan because there was no evidence in the record that the parent would not be a "fit, loving and capable parent." Other times, courts considering a child's "interests" have ruled against the transgender parent, seemingly using a proper standard.[2] For instance, in *In re Marriage of Magnuson*, the court affirmed a ruling against a transgender parent by stating it had "properly considered the children's needs in making a residential placement decision, not a parent's transgender status, conforming to the principles in sexual [orientation] cases." This is not to say transgender parents don't lose access to their children based solely on their gender identity—unfortunately it does happen.[3] Some courts have lacked understanding about a transgender parent's need to transition.

1. *See M. v. M.; U. v. U.*, FA94-0064700, FA89-0050074, 1996 Conn. Super. LEXIS 1774 (July 11, 1996); *In re Custody of T.J.*, No. C2-87-1786, 1988 Minn. App. LEXIS 144 (Minn. Ct. App. Feb. 9, 1988); *Mayfield v. Mayfield*, Case No. 96AP030032, 1996 Ohio App. LEXIS 3724 (Ohio Ct. App. Aug. 14, 1996). **2.** *In re Marriage of Magnuson*, 170 P.3d 65, 66 (Wash. Ct. App. 2007).

> **"I will always be your dad. No matter what happens we can't change that."**
>
> **—BRIANNA HARRIS**

For example, in *Cisek v. Cisek,*[4] the court terminated a transgender parent's visitation rights, holding that there was a risk of both mental and "social harm" to the children. The court asked whether the parent's so-called "sex change" was "simply an indulgence of some fantasy."[5] An Ohio court imposed an indefinite moratorium on visitation based on the court's belief that it would be emotionally confusing for the children to see "their father as a woman."[6]

The case law on this issue varies widely by state, however, so it's always best to check with a local attorney or contact Lambda Legal's Help Desk (toll-free at 866-542-8336 or at www.lambdalegal.org/help).

Q: Can the validity of a marriage itself be questioned when a spouse who is a non-biological parent transitions—thereby "canceling out" parental rights?
A: It all depends on which state you live in—and where you happen to travel. Families with a transgender mother or father may find "presumption of parentage" is not respected across one particular state line or another.

In *Kantaras v. Kantaras*, the wife of a transgender man who had transitioned before they married, attacked the validity of their 10-year marriage and the transgender man's status as a legal parent to the couple's two children. A Florida trial court issued a decision that was groundbreaking at the time; holding that Michael Kantaras was legally male—affirming the validity of the marriage and awarding him primary custody of the couple's children. A year later, though, the Florida Court of Appeals reversed, voiding the marriage and sending the case back to the trial court to determine Michael Kantaras' parental rights. He was eventually awarded shared custody of the children in an out-of-court settlement in spite of the court's ruling to void his marriage.[7]

The main takeaway is that transgender parents should not rely on marriage as a permanent connection to a child—and should file for adoption of any non-biological children as soon as possible. For more information, contact Lambda Legal's Help Desk at 866-542-8336 or visit www.lambdalegal.org/help.

Q: Is there anything special that transgender people should do when trying to foster or adopt a child?
A: Foster and adoption agencies put prospective parents through a rigorous series of interviews and investigations, and the process can be very invasive. None of these should bar transgender parents from approval, however. Some states do explicitly ban gay and lesbian couples from adopting, but none specifically address prospective parents who are transgender. Only six states prohibit discrimination against foster and adoptive parent applicants based on gender identity in their laws or regulations, leaving transgender people in 44 states vulnerable to extra scrutiny or denial simply for being transgender. Placement of a child is up to a judge— although the process can also be sabotaged if an agency or individual staffer happens to have anti-transgender biases.

On the other hand, some agencies (such as True Colors in Hartford, Connecticut and Green Chimneys in New York City) actively seek out LGBT foster families for adolescent youth.

COMING OUT TO YOUR CHILDREN

TRANS PARENTS AND THEIR CHILDREN SHARE THEIR ADVICE.

Marlow White, 47: "Be willing to have a dialogue. Kids are resilient—they are our best supporters and advocates. Since I have transitioned my children have marched with and supported me."

LaAsha Nelson, 11 (White's daughter): "[When my Pops told me] I didn't really understand. When I got older and understood, it still had no effect. [I would tell kids] not to worry because even though their [parents'] bodies change, it doesn't mean that they're going to change. Love them the same."

Crystall Otway, 13 (White's step-daughter): "Tell your child soon, as soon as possible. In my case, I had not been told my stepfather had transitioned, and it was because my mom wanted to 'protect' me. Honesty is the best policy."

Sophie Marnin, 10: "Just act normal when you're telling your child."

Seth Marnin, 43 (Sophie's father): "Trust your kid and your own love for your kid. At the end of the day, your kids want to know you love them."

3. See also *M.B. v. D.W.*, 236 S.W.3d 31 (Ky. Ct. App. 2007). **4.** *Cisek v. Cisek*, No. 80 C.A. 113, 1982 Ohio App. LEXIS 13335 (Ohio Ct. App. July 20, 1982). **5.** *Id.* at *3-4. **6.** *J.L.S. v. D.K.S.*, 943 S.W.2d 766 (Mo. Ct. App. 1997). **7.** *Kantaras v. Kantaras*, 884 So. 2d 155 (Fla. Dist. Ct. App. 2d Dist. 2004).

Resources

These organizations and resources provide education and advocacy that may be helpful for transgender parents.

COLAGE
Support for anyone with a lesbian, gay, bisexual, transgender or queer parent. 415-861-KIDS
www.colage.org

GENDER SPECTRUM
Works toward creating a more gender-sensitive and inclusive experience for all children and teens.
510-788-4412
www.genderspectrum.org

NATIONAL CENTER FOR TRANSGENDER EQUALITY
Monitors federal activity on transgender issues and emphasizes national advocacy and education.
202-903-0112
www.transequality.org

PFLAG TRANSGENDER NETWORK
Though more focused on the parents of trans people than on transgender parents, PFLAG's family approach can be helpful. 202-467-8180
pflag.org/transgender

TRANSGENDER LAW CENTER
A California-based organization whose resources can be useful nationally. 415-865-0176
www.transgenderlawcenter.org

TRANSPARENT
A documentary film about 19 transgender men who gave birth to children.
www.julesrosskam.com/transparent/

TRANSYOUTH FAMILY ALLIES
Partners with educators and communities to develop supportive environments where gender may be expressed and respected. 888-462-8932
www.imatyfa.org

TIPS

HOW TO PROTECT PARENT-CHILD RELATIONSHIPS

There is a lot that transgender parents can do to protect their families in advance from any efforts to limit child-parent access by a hostile family member, ex-partner or judge:

1. Protect your legal relationship with your child, especially if you are not the biological parent. Go to court to legally adopt children who recognize you as their parent but aren't blood relatives.

2. Protect your marriage, if you have one, by executing a last will and testament for both you and your spouse; financial and medical powers of attorney designating each other; and a written agreement laying out each spouse's rights and responsibilities regarding your children (and including an acknowledgement that one spouse is transgender). Even if your marriage appears entirely valid, if one or both of you is transgender, its legality may be challenged. Consider hiring an attorney to make sure you're aware of jurisdictional variations and other issues. For more information, visit lambdalegal.org/publications/toolkits.

3. Research clearly shows both gender and "gender conformity" are irrelevant to a child's happiness and development; don't hesitate to share this with anyone claiming that transgender people influence children negatively.

4. Remember that kids are generally able to adapt much more easily to a parent's transition if family relationships stay loving and supportive. To find out more, call Lambda Legal's Help Desk at 866-542-8336 or visit www.lambdalegal.org/help.

Photo © Brianna Harris

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CHAPTER XIII

Transgender People and Marriage Laws

When the Supreme Court legalized marriage for same-sex couples on June 26, 2015, it was a great day for transgender people of all sexual orientations: the highest court in the land had proclaimed the right to marry to be gender-blind. Transgender people have a long history of being denied the right to marry and having their partnerships and marriages disrespected.

Now, anyone can marry in any of the 50 states, regardless of gender—and also regardless of whether someone's gender is recognized by officials in the state where they live.

However, transgender people and their families continue to face marriage-related problems in the wake of the historic Supreme Court ruling. Here are some examples:

- Some courts will continue to challenge certain parent-child relationships.
- Not all state or local officials provide a marriage license that reflects a person's gender identity.
- Many states only have marriage licenses and certificates with "bride" and "groom" language, which may not be relevant for all couples.
- Some officials may insist that a person's name and gender be registered according to what is listed on identity documents, even when the information is no longer accurate.

None of these scenarios affect the validity of a marriage, but some may have the effect of outing people, and parenting disputes often have serious repercussions.

It is vital for governments and courts to recognize that gender identity defines a person's sex. Lambda Legal is working hard to ensure that transgender people are acknowledged for who they are according to their gender identity, in the context of marriage and beyond. If you have questions or concerns, talk to an attorney or contact Lambda Legal's Legal Help Desk at 1-866-542-8336 or www.lambdalegal.org/help.

MY STORY ROBINA ASTI

(pictured with her late husband, Norwood Patton)

"Our 2004 wedding was unique and distinctive. It was in an aircraft hangar. The altar was a helicopter and the reverend was a flight instructor, like me. Norwood made the card—he was an artist—and we entitled it 'The September of our Lives.'

"Norwood died eight years later. And people kept saying you've got to collect his Social Security. So I went in for an interview. I thought they'd accepted it because they had all the information. I had changed all my documents back in the 1970s.

"It took a year, but finally they contacted me—and summarily denied my application, saying I was not a woman at the time of my marriage. That was a direct shock.

"Well, I got so mad that I said this has got to change. And that's when I found Lambda Legal. They fought Social Security to change their ruling about this. And they did. And they changed the policy as well.

"Valentines Day 2014 I went into my bank account and I saw a bunch of money in it and I swear to God I looked up at the sky and I said, 'Thank you, Norwood!'"

FAQ

Answers to Common Questions about Marriage Laws

Q: As a transgender parent, can I rely on being married to protect my parental rights?
A: Unfortunately, marriage itself may not be enough to protect your rights if you are not a biological or adoptive parent—a restriction that applies to cisgender people as well. The truth is that parental rights can be very hard to defend in court once they're challenged, whether as part of divorce or custody proceedings or because of sheer discrimination.

Lambda Legal strongly recommends that all non-biological parents secure an adoption or court judgment of parentage to protect their parental rights. Also, documenting your intentions for a child through a will and other legal documents and proceedings is especially important when a parent is transgender. Couples should consider writing up a statement of intention as well.

For more information, consult Lambda Legal's "Transgender Parenting" at lambdalegal.org/publications/toolkits.

Q: Can my state use its restrictive requirements for changing the gender marker on my birth certificate to prevent or invalidate my marriage?
A: No, not even the most restrictive state rules for changing the gender marker on birth certificates can interfere with your right to marry.

Most U.S. states still do require a court order to change the gender on birth certificates. And many still require proof of gender-affirming surgery, despite mainstream medical and legal consensus that such requirements are irrelevant and inappropriate. As of October 2015, Idaho, Kansas, Ohio and Tennessee don't allow gender markers to be changed on birth certificates under any circumstance. But since the June 2015 Supreme Court marriage ruling, all states must respect your right to marry another person, regardless of gender.

Q: Will my marriage be affected if I move to a state where my gender is not recognized?
A: All valid marriages must be fully respected even if a couple moves to a state with anti-transgender laws on the books.

Q: If I transition after marrying, will my marriage still be valid?
A: All marriages remain valid if they were valid at the time at which they were entered. And since the June 2015 Supreme Court decision legalizing marriage for same-sex couples, states are no longer allowed to restrict marriage according to gender. Anyone already in a valid marriage must have access to marriage-related federal and state rights and benefits.

Lambda Legal has consistently defended the principle that marriages may not be invalidated retroactively—an idea that remains important amid continued anti- transgender policies and sentiments. In 2007 Lambda Legal won a Florida alimony case known as *Roach v. Roach n.k.a. Silverwolf* involving a transgender man who transitioned during his marriage. The judge upheld the couple's alimony agreement based on the determination that the marriage was valid when it was entered.

Q: Will my marriage certificate accurately reflect my gender?
A: Most states have incorporated gender-neutral terminology into marriage contracts. For example, Washington and New York marriage contracts have replaced "Bride" and "Groom" with "Spouse A" and "Spouse B." Georgia uses "Applicant 1" and "Applicant 2." If your state is still issuing marriage licenses that are not gender-neutral or do not reflect your gender identity, contact Lambda Legal's Legal Help Desk at 1-866-542-8336 or www.lambdalegal.org/help.

Q: Do my spouse and I need special documents for immigration applications?
A: The U.S. Citizenship and Immigration Services (USCIS) no longer requires a court order or proof of surgery to affirm transgender status (unlike some states). Instead, a transgender person can show a medical certification from a licensed physician (M.D. or D.O.) certifying appropriate clinical treatment under guidelines issued by the World Professional Association for Transgender Health (WPATH). Or, one can use an amended birth certificate, passport, naturalization certificate or in some cases a driver's license. (See "Immigration Rights" on page 56 for more about this.)

Q: Before the 2015 Supreme Court decision legalizing marriage for same-sex couples, I was denied a marriage license because I am transgender. Should I reapply now?
A: There should be nothing preventing you from getting a marriage license now, although your marriage won't likely be recognized retroactively. Contact Lambda Legal Help Desk

> **Social Security denied my application, saying I was not a woman at the time of my marriage.**
>
> **—ROBINA ASTI**

for further assistance or if you experience more problems getting married in your state.

Q: Do I need to disclose my transgender identity to my spouse prior to getting married?
A: A person's transgender status is deeply personal and private, and it is constitutionally protected. In the U.S., there is no legal duty to disclose to a partner even if you are getting married. It is ultimately up to each transgender person to decide whether to tell your partner that you are transgender. This may not be true in other countries, such as England, where the 2004 Gender Recognition Act requires people to disclose their transgender status or risk having their marriages annulled.

DEFINITION
"LEGAL GENDER"

This expression gets thrown around a lot, but there is no such magical wand to make you "legally" male or female when it comes to gender transition. Laws vary from state to state concerning the requirements for changing gender markers on birth certificates and other identity documents. Laws also vary concerning whether a state will accept such identity documents as conclusive with respect to your gender identity. Finally, context also can make a difference as to whether your gender identity will be respected. For example, a court might recognize your gender identify or the sex designation on your birth certificate as your "legal gender" in one marriage-related context, but then a government agency in the same state might deny you respect in another marriage-related context, despite the change to your gender marker.

To read more about state variations in identity documents and requirements, see "Identity Documents," another fact sheet in this series, which can be found at lambdalegal.org/publications/toolkits.

IMMIGRANT RIGHTS

PREPARING FOR AN IMMIGRATION INTERVIEW

The U.S. Citizenship and Immigration Services (USCIS) has a policy (since 2013) of treating same-sex and different-sex married couples identically for the purposes of immigration. The Supreme Court's 2015 decision legalizing marriage for same-sex couples further clarifies that couples—where one or both are transgender—can marry in any state and have access to full federal immigration benefits, such as the right to petition for a spouse's permanent residence (also known as a "green card") or a fiancé(e) visa (also known as a "K-1").

- Lambda Legal and other organizations are watching closely to make sure these policies are enforced fully, including during in-person interviews at an office of the U.S. Citizenship and Immigration Services (USCIS) in which married couples making certain applications are required to participate.
- If you're headed into one of these interviews, you should know that there will be questions about your relationship, including how you met and details about your married life. But all couples must be treated the same regardless of their gender.

Contact Lambda Legal, an immigration lawyer or Immigration Equality if you feel you have been discriminated against during this process because of your sexual orientation or gender identity.

Tips

DOCUMENTS YOU MIGHT NEED IF YOU'RE GETTING MARRIED AND ONE OR BOTH OF YOU IS TRANSGENDER:

- Power of attorney
- **Health care proxy**
- **Living will**
- **HIPAA release**
- **Guardianship/custody agreement or second-parent adoption (if kids are involved)**

Also: It's helpful to have your identity documents (such as your birth certificate, driver's license and passport) changed to reflect your gender identity. Rules for changing gender on your ID vary from state to state. For more information, see www.lambdalegal.org/know-your-rights/transgender/changing-birth-certificate-sex-designations

GLOSSARY

cisgender
Refers to people whose gender identity is the same as their assigned or presumed sex at birth. See gender identity; transgender; TGNC

gender-affirming surgery
General terms for a variety of surgical procedures that may or may not be a part of a person's gender transition.

gender dysphoria
A clinical psychiatric diagnosis, first listed in the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-V), that describes an intense, continuous distress resulting from an individual's sense of the inappropriateness of their assigned sex at birth. In previous versions of the DSM, gender dysphoria was known as gender identity disorder (GID), a term which became increasingly disfavored. This diagnosis is the source of some controversy within the transgender community, because it is frequently used by medical providers to limit or screen access to trans-related health care, and because it promotes a medicalized understanding of being transgender.

gender expression
Refers to the way a person expresses gender through dress, grooming habits, mannerisms and other characteristics.

gender identity
An individual's inner sense of being male, female or another gender. Gender identity is not necessarily the same as sex assigned or presumed at birth. Everyone has a gender identity.

gender-nonconforming (GNC)
A term used to describe people who do not meet society's expectations of gender roles.

public accommodations
Non-governmental entities that offer goods or services to the general public, whether independently or through facilities such as restaurants, retail stores, private schools, doctors' offices, homeless shelters and day care centers, among others.

TGNC
Transgender or gender-nonconforming.

transgender
Refers to people whose gender identity, one's inner sense of being male, female, or something else, differs from their assigned or presumed sex at birth.

transition
This term describes both a shift over time from occupying the social role of one gender to that of another and to the medical procedures that sometimes accompany that shift. Transition may or may not include medical or legal aspects such as taking hormones, having surgeries, or changing identity documents to reflect one's gender identity.

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