

UNDERSTANDING ISSUES FACING TRANSGENDER AMERICANS



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TRANSGENDER
EQUALITY

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The Movement Advancement Project (MAP) is an independent think tank that provides rigorous research, insight and analysis that help speed equality for LGBT people. MAP works collaboratively with LGBT organizations, advocates and funders, providing information, analysis and resources that help coordinate and strengthen their efforts for maximum impact. MAP also conducts policy research to inform the public and policymakers about the legal and policy needs of LGBT people and their families.

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Transgender Law Center

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About this report:

This report is part of a series of publications that includes:

- Understanding Issues Facing LGBT Americans
- Understanding Issues Facing Bisexual Americans
- Understanding Issues Facing Transgender Americans

The series is a primer that introduces the major areas in which LGBT Americans face legal barriers to fully participating in life and provides a summary of what advocates are doing to work for change. This report incorporates information current as of February 2015. Please see www.lgbtmap.org/progress-toward-equality for more information.

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INTRODUCTION

Transgender Americans are experiencing a unique moment in history. Rising visibility, unprecedented advocacy, and changing public opinion are working to provide transgender people greater legal protections than ever before. At the same time, many transgender people, particularly transgender women and transgender people of color, still face enormous barriers to their safety, health, and well-being.

One challenge in assessing the impact of these barriers is a pronounced lack of data on the lives of transgender Americans. Very few surveys ask about transgender status, and there is only one national study focused exclusively on transgender people in the United States: the National Transgender Discrimination Survey (NTDS). As more state and federal agencies include questions about gender identity and expression in their surveys and data collections, it will be possible to paint a more detailed and accurate picture of the lives of transgender people and the disparities they face.

This guide provides a high-level introduction for advocates and allies to the issues facing transgender Americans, as well as recommendations for change.

A note about terminology:

As used in this document, the word “transgender” describes individuals whose sex at birth is different from who they know they are on the inside. At some point in their lives, many transgender people decide they must live their lives as the gender they have always known themselves to be, and transition to living as that gender.

“Gender identity” is a person’s deeply-felt inner sense of being male, female, or something other or in-between. “Gender expression” is a person’s characteristics and behaviors such as appearance, dress, mannerisms and speech patterns that can be described as masculine or feminine. Note that gender identity and expression are independent of sexual orientation, and transgender people may identify as heterosexual, gay, lesbian, bisexual, or queer. Transgender people experience discrimination because of their gender identity and gender expression, and may also experience discrimination because of their sexual orientation or perceived sexual orientation.

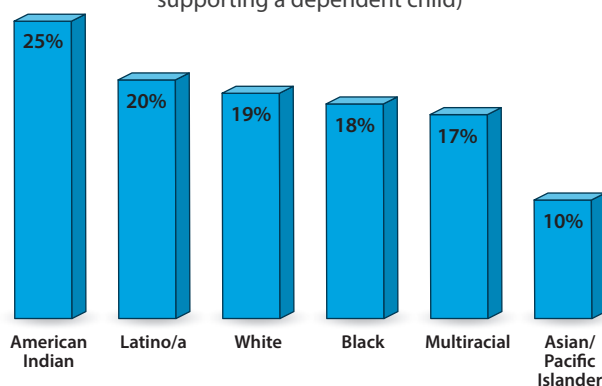
TRANSGENDER AMERICANS IN PROFILE

Transgender Americans live and work in communities in every state.¹ Transgender Americans have families, work hard to earn a living, pay taxes, and serve their communities and their country. Surveys estimate that between 0.3% and 0.5% of Americans identify as transgender.² Applying these figures to the total number of adults in the United States, this research suggests that there are nearly one million transgender adults across the nation.

Transgender people are racially and ethnically diverse.³ Many transgender people are parents:⁴ the NTDS found that 38% of respondents reported being a parent.⁵ American Indian and Latino/a transgender people report parenting or financially supporting a child at higher rates than white transgender people (see *Figure 1*).⁶

Transgender people are becoming more visible in American society and popular culture. Actress Laverne Cox appeared on the cover of *Time* in May 2014, and the following November was declared one of *Glamour’s* Women of the Year. Author Janet Mock released her memoir of growing up transgender, *Redefining Realness*, in February 2014. And Amazon Studios recently debuted “Transparent,” a critically acclaimed comedy-drama about the ramifications when a transgender woman comes out to her family.

Figure 1: Transgender Parenting
by Race (% of respondents by race currently supporting a dependent child)



Source: Rebecca L. Stotzer, Jody L. Herman, and Amira Hasenbush, “Transgender Parenting: A Review of Existing Research,” *Williams Institute*, October 2014, www.williamsinstitute.law.ucla.edu/research/parenting/transgender-parenting-oct-2014.

BARRIERS TO EQUALITY FOR TRANSGENDER AMERICANS

This section of the guide discusses the barriers to equality facing transgender people because of their gender identity and/or expression, as well as the impact of these barriers on transgender people's health, safety, and economic security. The challenges described below are exacerbated for transgender women and transgender people of color, who often experience deeper inequality in specific areas compared to transgender men and white transgender people.

Discrimination in Public Accommodations

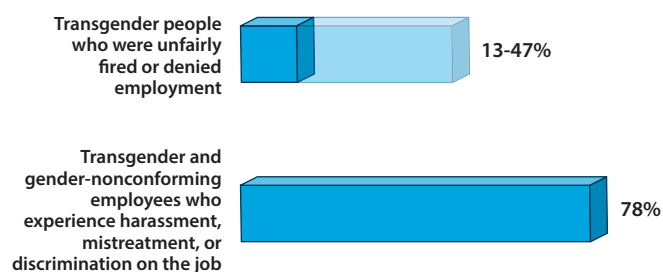
Public accommodations are places accessible to the public, such as retail stores, restaurants, parks, hotels, libraries, movie theatres, and banks. In a 2014 study conducted in Massachusetts, 65% of transgender people reported experiencing discrimination in a place of public accommodation in the past 12 months.⁷ The study revealed that bathrooms in restaurants, libraries, cinemas, shopping malls, airports, and other public places were also locations of frequent, sometimes serious harassment and abuse of transgender people. Transgender people who reported discrimination in public accommodations often had increased physical and emotional health problems as a result. The study found that discrimination caused transgender people to postpone health care, while simultaneously increasing negative health outcomes. Only 17 states and D.C. prohibit discrimination in public accommodations on the basis of gender identity, covering just 36% of Americans.⁸

Local, state, and federal governments should explicitly prohibit public accommodation discrimination on the basis of gender identity and sexual orientation, while ensuring that transgender people can be safe in these places. Where possible, single-user restrooms should be designated as gender-neutral, and transgender people should be assured safe access to facilities that match their gender identity.

Discrimination in Employment

Transgender people experience pervasive discrimination at work. Between 13% and 47% of transgender workers report being unfairly denied a job,⁹ and 78% report being harassed, mistreated, or discriminated against at work, as shown in *Figure 2*.¹⁰

Figure 2: Transgender Workplace Discrimination



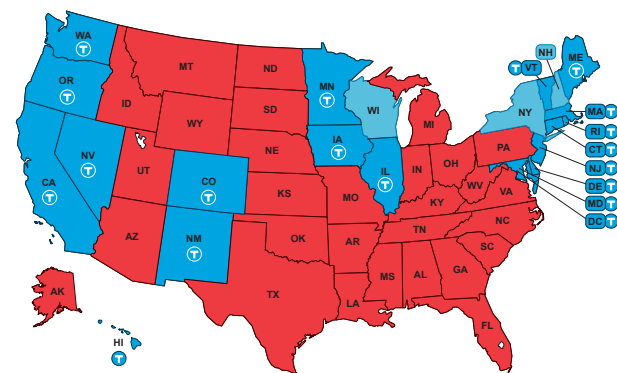
Sources: M.V. Lee, Badgett, Holning Lau, Brad Sears, and Deborah Ho, "Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination," *The Williams Institute*, June 2007. Deena Fidas and Liz Cooper, "The Cost of the Closet and the Rewards of Inclusion," Human Rights Campaign Foundation, May 2014.

Transgender workers of color report higher rates of job loss and employment discrimination compared to white transgender workers.¹¹ Common forms of employment discrimination against transgender people include: unfairly firing or refusing to hire someone because they are transgender; prohibiting a transgender employee from dressing or appearing in accordance with their gender identity; limiting a transgender employee's interactions with customers; denying access to restrooms consistent with the employee's gender identity; using the wrong name or pronouns; outing a transgender employee to others or asking inappropriate questions; requiring a transgender employee to have updated identification documents or certain medical procedures in order to work or be hired as their self-identified gender. Employers also frequently only offer discriminatory health plans that exclude coverage for transition-related care.

Currently, only 18 states have clear laws prohibiting employment discrimination on the basis of gender identity or expression (see *Figure 3* on the next page).¹² There is no federal law that explicitly prohibits discrimination against transgender employees, but there are some protections in place. Both the U.S. Attorney General and the U.S. Equal Employment Opportunity Commission (EEOC) have interpreted Title VII of the Civil Rights Act of 1964, which prohibits discrimination "because of sex," to protect transgender workers. However, while the EEOC often mediates discrimination claims between employers and employees, and EEOC attorneys can prosecute employers in court, courts are not strictly bound to follow its interpretation of the law. In other words, a private employer who does not agree with an EEOC decision can refuse to abide by it, in which case the employee or EEOC must pursue the case in federal

Figure 3: State-Level Employment Nondiscrimination Laws

State-Level Employment Nondiscrimination Laws



- Employment nondiscrimination law covers sexual orientation and gender identity (18 states + D.C.)
- Employment nondiscrimination law covers only sexual orientation (3 states)
- No employment nondiscrimination law covering sexual orientation or gender identity (29 states)

Source: Movement Advancement Project, "LGBT Equality Maps: Non-Discrimination Laws."

court. The EEOC's rulings are binding on the federal government, and in 2014, President Obama issued an executive order expressly prohibiting discrimination against LGBT employees of the federal government and LGBT employees working for federal contractors.¹⁶

Local, state, and federal governments should legislate or implement employment protections that prohibit discrimination on the basis of gender identity and expression. Congress should pass explicit federal employment protections. Federal agencies such as the DOJ, EEOC, and the Department of Labor should educate employers and employees about existing protections and adopt guidelines for private employers to comply with federal protections. In addition, job training programs should be inclusive and specifically address the needs of transgender and gender non-conforming people.

Lower Income for Transgender People

Outdated and archaic laws and still-pervasive bias and discrimination mean that LGBT people across the United States pay an unfair price for being who they are.¹⁷ Transgender people, especially transgender people of color, pay a particularly steep price. Discrimination and higher costs collude to reduce earning power and savings and keep transgender people in poverty. The NTDS study of transgender Americans found they are far more likely to be poor when compared to the larger U.S. population. In fact, transgender Americans were nearly four times more likely to have a household income under \$10,000 per year than the population as a whole (15% vs. 4%).¹⁸ This is true despite 87% of transgender adults having completed at least some college and 47% having obtained a college or graduate degree—rates much higher than the general population.

In addition, transgender people of color report much higher rates of extreme poverty.¹⁹ Asian and Pacific Islander (API) transgender people were six times as likely to report extremely low incomes compared to other API Americans, while 34% of black transgender respondents and 28% of Latino transgender respondents reported incomes at this level.²⁰

See *Paying an Unfair Price: The Financial Penalty for Being Transgender in America* for more information on economic security for transgender people.

Military Service

Despite the repeal of the U.S. military's "Don't Ask Don't Tell" policy in 2010, which prohibited open service by lesbian, gay, or bisexual service members, transgender service members are still not permitted to serve openly. In 2014, several public figures, including former Secretary of Defense Chuck Hagel, then-House Speaker Nancy Pelosi, and Air Force Secretary Deborah Lee James, spoke about the need to update military regulations to allow open service by transgender people. In August, a high-level commission convened by the military research think tank The Palm Center recommended immediate open service for transgender service members.¹³

Concurrently, transgender veterans are returning home from service to find a lack of support. Transgender veterans have a higher rate of suicide compared to the general population.¹⁴ In a recent landmark case, the U.S. Army agreed to change the names on key identity documents of two transgender veterans, clearing the way for other veterans to obtain updated records and easier access to veterans' benefits.¹⁵

Discrimination in Housing

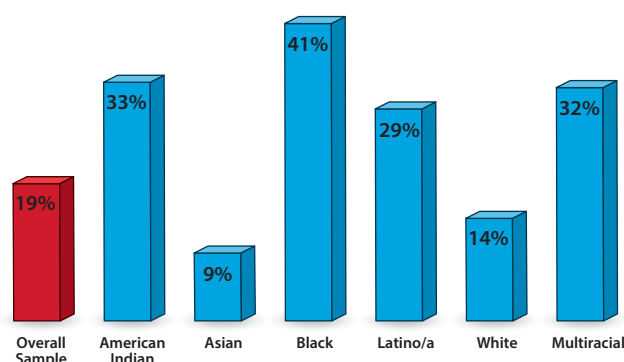
Adequate and affordable housing is essential to the economic security and overall well-being of every American. However, one in five transgender people (19%) in the United States have been refused a home or apartment and more than one in ten (11%) have been evicted because of their gender identity.²¹ Homelessness is a critical issue for transgender people, with one in five having experienced homelessness at some time in their lives because of discrimination and family rejection (see *Figure 4*).²² Unfortunately, transgender people facing homelessness also face discrimination from agencies that should be helping them, with nearly one in three (29%) reporting being turned away from a shelter due to their transgender status.²³

The Department of Housing and Urban Development (HUD) issued guidance and regulations in recent years that provide transgender people with limited protections from housing discrimination.²⁴ However, no federal statute explicitly prohibits evicting someone, refusing to rent to someone, or refusing to loan to someone because of gender identity/expression. Similarly, only 18 states and D.C. have clear laws prohibiting housing discrimination on the basis of gender identity, covering 39% of Americans.²⁵

Local, state, and federal governments should explicitly prohibit housing and lending discrimination on the basis of gender identity and sexual orientation. Shelters should provide access to transgender people on a nondiscriminatory basis, including housing people in sex-segregated facilities based on gender identity.

Figure 4: Homelessness by Race

(% of respondents who report ever becoming homeless)



Source: Jamie M. Grant, Lisa A. Mottet, and Justin Tanis, "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," *National Center for Transgender Equality and National LGBTQ Task Force*, 2011, www.endtransdiscrimination.org/report.html.

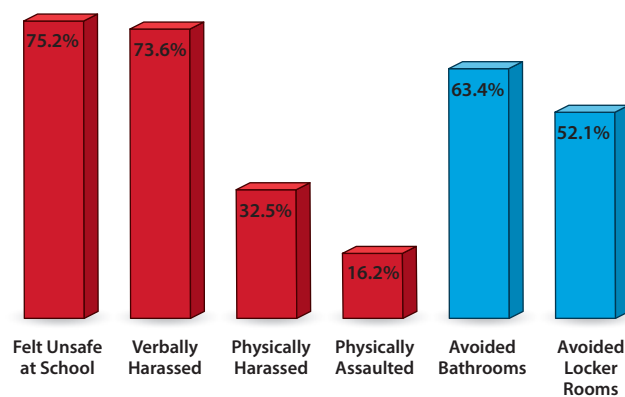
Congress should fully fund and implement the legislation such as Federal Plan to End Homelessness, which would expand access to affordable housing. Local, state, and federal agencies should implement homelessness data collection that includes data on gender identity and sexual orientation.

Discrimination in Education

Schools are difficult places for transgender students as they regularly face discrimination, bullying, and harassment in elementary, secondary, and post-secondary institutions. In one survey, 40% of gender non-confirming youth^a reported being frequently harassed by their peers and 37% reported frequent verbal harassment and name calling.²⁶ In another survey, 33% of all students reported frequently hearing anti-transgender slurs.²⁷ The same study found that levels of physical and verbal harassment were very high among surveyed students (see *Figure 5*). This harassment, bullying, and discrimination have a cumulative negative effect on education and achievement for transgender people: students who are bullied and face discrimination because of their gender expression are more likely to miss school, have lower GPAs, not plan to attend post-secondary education, and have higher levels of depression and lower self-esteem.²⁸

Across the United States, only 13 states have laws that clearly protect students against discrimination because of their gender identity and/or expression, and

Figure 5: Experiences of Transgender Students in School Based on Their Gender Expression
(% of transgender students)



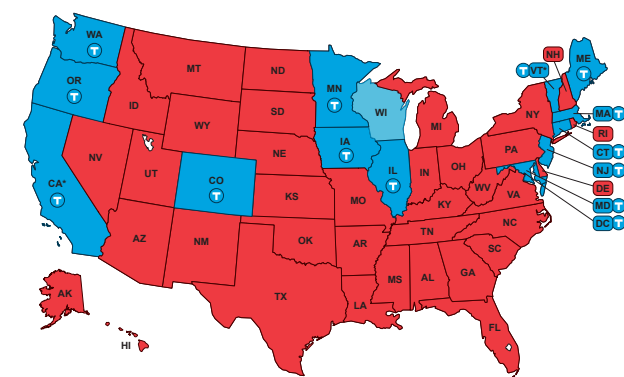
Source: J.G. Kosciw, E.A. Greytak, N.A. Palmer, & M.J. Boesen, "The 2013 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools," GLSEN, 2014, www.glsen.org/nscl.

^a The report defines gender-expansive youth in the survey as those who selected "transgender" or "other" when asked if they considered themselves "male, female, transgender or other gender."

only 18 states expressly prohibit bullying on the basis of gender identity and/or expression (see *Figure 6*).²⁹ In 2013, California passed a law ensuring that transgender students have the opportunity to participate fully in all school programs, activities, sports teams, and facilities.³⁰ Over a dozen states have passed similar policies to ensure that transgender students can participate in high school sports. In 2014, four women's colleges amended their admission policies to make clear that they accept transgender students: Mt. Holyoke College, Mills College, Simmons College, and Scripps College.

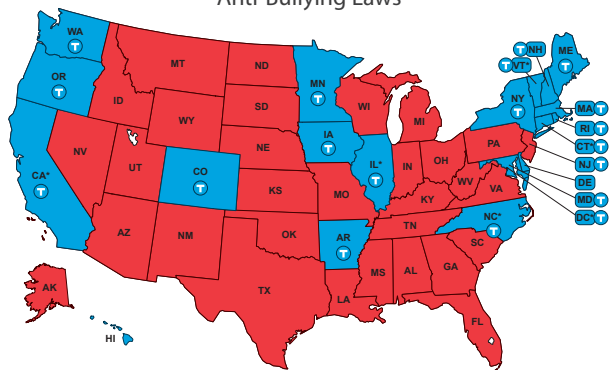
Figure 6: Safe School Laws

School Nondiscrimination Laws



- Light blue: Law prohibits discrimination in schools based on sexual orientation and gender identity (13 states + D.C.)
- Medium blue: Law prohibits discrimination in schools based on sexual orientation only (1 state)
- * Law prohibits discrimination in schools based on association with someone with a listed characteristic (2 states)
- Red: No law protecting LGBT students (36 states)

Anti-Bullying Laws



- Light blue: Law prohibits bullying based on sexual orientation and gender identity (18 states + D.C.)
- * Law prohibits bullying based on association with someone with a listed characteristic (5 states + D.C.)
- Red: No law protecting LGBT students (32 states)

Source: Movement Advancement Project, "LGBT Equality Maps: Safe Schools Laws."

Nationally, the U.S. Department of Education in 2014 issued guidance confirming that the federal Title IX sex discrimination law protects transgender students, and publicized two Title IX settlements on behalf of transgender students. Title IX applies to all K-12 schools, colleges, and universities that accept federal funds. Unfortunately, at least three colleges have successfully applied for exemptions from this law, citing religious objections.

Congress should pass laws expressly prohibiting discrimination in education on the basis of gender identity and sexual orientation, as well as laws requiring all schools to implement comprehensive and effective anti-bullying and anti-harassment policies that specifically include gender identity and sexual orientation. The National Center for Education Statistics should ensure that data collection includes detailed information about bullying, harassment, and other school violence, including whether the victim's gender identity or expression were at issue.

Persistent Bullying and Harassment

Jewlyes Gutierrez was charged with misdemeanor battery after an altercation between her and several other students was caught on video in November, 2013. The subject of persistent harassment and intimidation at school, Ms. Gutierrez had previously sought intervention and support from Hercules High staff with no success. Local organizations such as the Transgender Law Center, RYSE Youth Center (RYSE,) and Rainbow Community Center rallied in support of Ms. Gutierrez. As a result, she was able to enter into an agreement with the court to have her case reevaluated upon the completion of a restorative justice program conducted by the National Council on Crime and Delinquency (NCCD). After reviewing the case in May 2014, Judge Thomas M. Maddock dropped the charge in recognition of Ms. Gutierrez's successful completion of the restorative justice program. Restorative justice practices aim precisely for the results produced in this case—facilitating individual and community healing and accountability and working to protect young people of color, who have the highest inequitable rates of contact, from entry and engagement in the juvenile justice system.

Source: Transgender Law Center, "Charge Dropped Against Transgender Student, Restorative Justice at Work," <http://transgenderlawcenter.org/archives/10281>.

Health

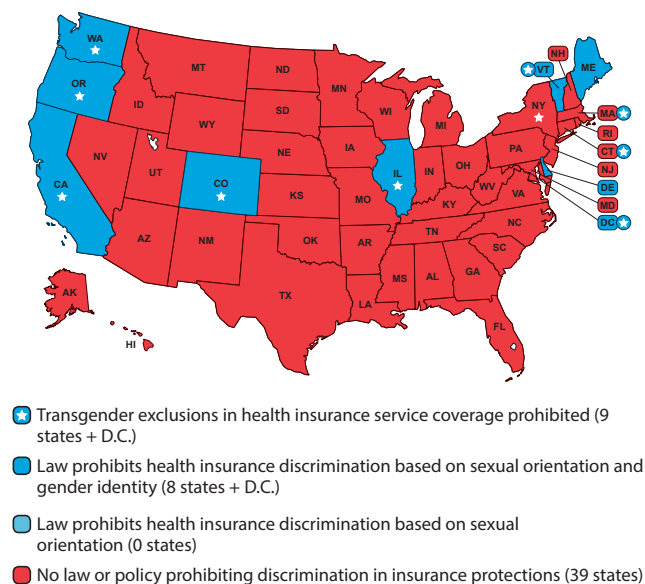
Transgender people report low insurance rates and shockingly high rates of negative health outcomes.³¹ The Affordable Care Act (ACA) has decreased the number of transgender people without insurance and has also prohibited plans sold in state and federal health insurance marketplaces from discriminating against enrollees on the basis of gender identity.³² Nine states and DC have adopted rules requiring insurance plans to eliminate transgender-specific exclusions (see *Figure 7*),³³ and in 2014, the Department of Health and Human Services ended Medicare's ban on coverage for transgender-specific care. But deep disparities remain, including lower rates of coverage and continued exclusions of medically necessary transition-related care in plans run by private employers and many public plans, including many state Medicaid plans and the Veterans Health Administration.

Only 40% of respondents to the National Transgender Discrimination Survey reported accessing health insurance through their current or former employer,³⁴ compared to 44.6% of Americans.³⁵ Ten percent of respondents accessed coverage through Medicare or Medicaid and 10% purchased their own private coverage.³⁶ African-American respondents had the worst health insurance coverage of any racial category: 39% reported private coverage and 30% public.³⁷

Sixty percent of respondents reported accessing health care through their doctor's office, with 28% seeking care at health centers and clinics, and 4% primarily accessing care in emergency rooms.³⁸ Lower income transgender people and transgender people of color were more likely to access care through emergency rooms: 17% of African-Americans used emergency rooms for primary care, as did 8% of Latino/a respondents, and 8% of respondents earning under \$10,000 per year.³⁹ Unfortunately, 13% of respondents reported being denied equal care in emergency rooms because of their gender identity.⁴⁰

Transgender people often need medical treatment like hormones or surgery to bring a person's body in line with their gender identity. Despite widespread recognition of the necessity of such treatments by every major medical organization in the United States, including the American Medical Association, discriminatory healthcare exclusions still deny transgender people coverage for medically necessary care, including hormone therapy, counseling, and other medical care.

Figure 7: State-Level Insurance Nondiscrimination Laws
State-Level Insurance Nondiscrimination Laws



Note: This map does not reflect states which may have removed transgender exclusions from state Medicaid programs.

Source: Movement Advancement Project, "LGBT Equality Maps: Non-Discrimination Laws."

Additionally, transgender people are denied many routine preventive services such as Pap smears and prostate exams that are available broadly to non-transgender people. These services may not correspond with a transgender person's gender identity or the gender marker on ID documents or health records, and so coverage may be denied through the insurance carrier, or overlooked or denied by the patient's health care provider.

Even when transgender people have full health insurance coverage, they often face discrimination by health care providers or need to educate their providers on what it means to be transgender. In a survey of transgender Coloradans, respondents reported almost twice the number of days with poor physical or mental health compared to the general population.⁴¹ A study in Massachusetts found that 19% of transgender respondents had postponed or avoided necessary care due to mistreatment or discrimination from health care workers.⁴² The U.S. Department of Health and Human Services interprets the Affordable Care Act—which prohibits sex discrimination by health care organizations that accept federal funds—to prohibit bias against transgender people. However, federal and most state laws still do not expressly prohibit such discrimination.

Leo Kattari's Story: A Smooth Transition, Meal Train and All



As I prepared for gender confirmation surgery, our human resource manager did some research to see if our health benefits could help cover the surgery or hormone replacement therapy, but as I expected, the answer was no. And although we have a clear nondiscrimination policy that includes sexual orientation and gender identity/expression, our existing leave provisions didn't specifically cover leave for the surgery. I had intended to rely on sick leave and vacation to get me through, but my supervisor and director didn't want me to exhaust all my personal time. So, they sought and received permission from our board of directors to allow me to take two weeks under a flexible interpretation of the paid leave policy, and I worked a third week from home. While I was out, my coworkers independently organized a "meal train" and took turns cooking and bringing meals to me at home.

—Leo Kattari, Denver

Transgender people, specifically transgender women of color, are at heightened risk for HIV. Estimates are that as many as one in four black transgender people in the United States is living with HIV/AIDS.⁴³ Discrimination, stigma, social isolation, bias among health and social service providers, and a lack of targeted prevention efforts have all contributed to these high levels of infection. The National HIV/AIDS Strategy recognizes that intensifying prevention efforts in communities where HIV is most heavily concentrated is essential for combating the epidemic.⁴⁴

Shockingly, 41% of respondents to the National Transgender Discrimination Survey reported ever attempting suicide.⁴⁵ This compares to 1.6% of all Americans who have reported attempting suicide. Respondents who were bullied, harassed, assaulted, or expelled because they were transgender or gender non-conforming in school (at any school level) reported elevated levels of suicide attempts (51% of respondents).⁴⁶ Among youth, transgender youth are two to three times more at risk for depression, anxiety disorders, suicidal ideation, suicide attempt, self-harm without lethal intent, and both inpatient and outpatient mental health treatment.⁴⁷

States should remove transgender-specific exclusions from public and private health insurance coverage. State and federal governments should expressly prohibit discrimination in health insurance provision on the basis of gender identity and sexual orientation. Local, state, and federal agencies that

collect health data, such as the Department of Health and Human Services, the Office of the National Coordinator for Health Information Technology, and the National Institutes of Health, should including gender identity and sexual orientation in data collection, health records, and health research. Federal agencies should set standards of care and data collection for state and local agencies. The Food and Drug Administration should completely lift the ban on blood donation by gay men, which has also been used to exclude transgender donors regardless of their gender or sexual orientation.

Congress should fully fund the national HIV/AIDS strategy and comprehensive sexuality education while defunding ineffective and dangerous abstinence-only-until-marriage programs. Federal and state agencies should develop and implement comprehensive HIV prevention and treatment strategies for all correctional facilities. Local and state law enforcement agencies should eliminate policies that permit the consideration of condoms as evidence that an individual is engaged in criminal sex work.

Violence

Twenty-six percent of respondents in the National Transgender Discrimination Survey had been physically assaulted on at least one occasion because of anti-transgender bias.⁴⁸ According to the 2013 LGBTQ Hate Violence Report from the National Coalition of Anti-Violence Programs, transgender people were significantly more likely to experience threats, intimidation, harassment, discrimination, and sexual violence than non-transgender LGB people.⁴⁹

Transgender women and transgender people of color are much more vulnerable to violence, especially at the hands of law enforcement. In the 2013 Hate Violence Report, transgender women were four times more likely to experience police violence and six times more likely to experience physical violence when interacting with the police, compared to all respondents.⁵⁰ Transgender people of color were more than two and a half times more likely to experience police violence and six times more likely to experience physical violence from the police compared to white non-transgender LGB respondents.⁵¹ In 2013, transgender women of color comprised more than half of all LGBT homicide victims.⁵²

The Violence Against Women Act (VAWA) was reauthorized in 2014 with explicit prohibitions against discrimination in VAWA-funded programs on the basis of gender identity and sexual orientation. The Department of Justice has issued guidance to local agencies which includes the directive that sex-segregated services must be justified based on essential program needs and must serve individuals based on their gender identity. DOJ should also require that gender identity and sexual orientation data be collected whenever demographic data is collected in programs for victims of crime. DOJ should develop training materials for law enforcement officials and victim service providers to promote cultural competence for working with transgender people.

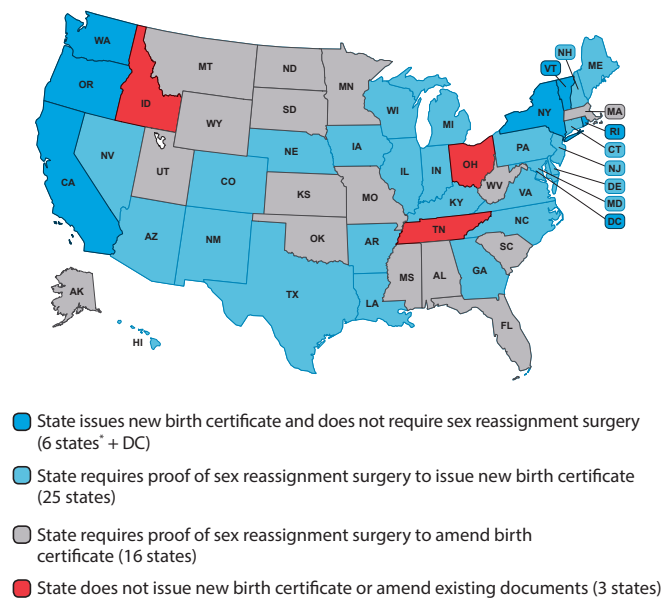
Inaccurate Identity Documents

Official identity documents—such as drivers' licenses, birth certificates, and passports—that do not match a transgender person's gender identity greatly complicate that person's life. Non-matching identification can obstruct employment and travel, as well as expose transgender people to harassment, violence, refusal of service, job loss, and other problems. The processes involved in changing each form of government-issued ID can be onerous and expensive, requiring filing of numerous applications, payment of filing fees, publishing notices of a name change, court appearances, and in some states, background checks. Historically, state and federal governments have imposed intrusive and burdensome requirements—such as court orders and proof of transition-related surgery—that have made it impossible for many transgender people to obtain accurate and consistent ID.

Only one-fifth (21%) of transgender people who have transitioned to living in accordance with their

Figure 8: State Birth Certificate Policies

State Birth Certificate Policies



*Note that New York City has its own policy in place

Source: Movement Advancement Project, "LGBT Equality Maps: Birth Certificate Laws."

gender identity have been able to update all of their IDs and official records with the correct gender, and one-third (33%) had updated none of their IDs or records, according to the National Transgender Discrimination Survey. At the time of the survey, only 59% had been able to update their gender on their driver's license or state ID; 49% had updated their Social Security record; 26% their passport; and just 24% their birth certificate.⁵³ The survey results also confirmed what most transgender people already knew—that when the gender marker on an ID does not match the way a person dresses and lives their life, it exposes people to a range of negative outcomes, from denial of employment, housing, and public benefits to harassment and physical violence.⁵⁴

Many states are streamlining their processes for updating identity documents: six states and DC have adopted modernized policies making clear that proof of surgery is not required to update a birth certificate (see *Figure 8*).⁵⁵ Thirty states and DC no longer require proof of surgery, a court order, or an amended birth certificate in order to update a driver's license. Some of these states have adopted streamlined processes that make it easy to update one's documents. In 2013, California passed a law removing the requirement that transgender people publish a notice of a name change in a newspaper.⁵⁶

Federal agencies should simplify gender change policies by allowing a range of mental health and medical providers to certify a gender change. Similarly, states should remove all burdensome requirements for updating personal identity documents—including surgery and court order requirements for gender marker change, and publication requirements for name change—and should issue new documents, not visibly amended ones. The National Center for Health Statistics should issue an updated Model State Vital Statistics Act that provides for gender change on birth certificates without a court order or proof of specific medical or surgical procedures.

Marriage and Family

Transgender people can be heterosexual, gay, lesbian, or bisexual, but regardless of their sexual orientation, they can often face myriad obstacles when it comes to marriage and parenting. For example, a transgender man who wants to marry a woman may still be seen as part of a same-sex couple and denied a marriage license in states that deny marriage to same-sex couples. Or, depending on state law, the couple may be seen as a same-sex couple in one state and a heterosexual couple in another state, with their marriage becoming valid or invalid depending on their state of residence. Even when a transgender person has legal recognition of their transition and enters into a heterosexual marriage,

courts have invalidated such marriages during legal disputes (for example, a transgender man dies and his employer denies benefits to his wife, arguing that the marriage was not valid). Additionally, if a marriage or relationship dissolves, transgender parents may have their gender identity or expression used to deny them custody or visitation rights.⁵⁷

In other family-related challenges, transgender youth can face a lack of support from their parents, often to devastating consequences such as dramatically increased rates of homelessness and attempted suicide. Some families subject children to harmful conversion therapy to attempt to change a youth's gender identity. Family acceptance is crucial to the health and well-being of LGBT youth; positive acceptance and understanding can lower risks for negative outcomes.⁵⁸ Unfortunately, one report found that only 43% of responding gender non-conforming youth reported having an adult in their family they could turn to.⁵⁹ And only 27% reported that their families were very accepting of LGBT people in general.⁶⁰

States should extend marriage to same-sex couples, and should recognize transgender people's marriages as legal regardless of whether one partner transitioned before or during the marriage. States should not use gender identity or sexual orientation as grounds for denying child support, custody, or visitation rights.

Wife of Transgender Man Turns To Food Stamps After Being Denied Pension Benefits

Transgender workers and their spouses (or workers and their transgender spouses) may face added challenges in ensuring that a surviving spouse receives earned pension benefits. The reason: Employers and pension boards may claim that a couple's marriage is invalid because one member of the couple was born the same sex as his spouse.

Consider the case of Nancy and Michael, who were married for nearly 30 years. Michael, a transgender man, worked for a major car manufacturer. Prior to his death from lung cancer in 2012, Michael contacted his employer's benefits administrator to make sure that Nancy would be taken care of after he died and would receive pension income and health insurance.

After Michael passed away, Nancy was notified that her claims for pension benefits were being denied because Michael was transgender and they were considered to be in a same-sex marriage. The company relied on Michael's birth certificate, which indicated that he was born female, even though Michael legally changed his name and his driver's license, and his employer changed Michael's employment records to indicate that he was male. Without the \$1,345 monthly benefit, Nancy was forced to turn to food stamps, government cash assistance, and Medicaid health benefits while she appealed this decision.

After legal advocacy by the Transgender Legal Defense & Education Fund, the company approved Nancy's claim for spousal pension benefits. Nancy also received pension benefits for the time it took to process her claim—a backpayment already totaling more than \$20,000.

Adapted from: Transgender Legal Defense & Education Fund, "Victory! Transgender Man's Surviving Spouse Wins Pension Benefits," April 7, 2014.

Interactions with the Criminal Justice System

More than 2.4 million people are incarcerated in the United States; the country is home to 5% of the world's population and 25% of its prisoners. Latinos are incarcerated at 2.5 times the rate of whites, and African Americans are at nearly 6 times the rate of whites.⁶¹ Transgender people and gender non-conforming people, particularly low-income people and people of color, face higher levels of policing and profiling, leading to higher levels of police harassment, imprisonment, and violence.⁶² Low-income transgender people (and transgender people are disproportionately low income) face more frequent policing. They also are more likely than the general population to face charges for crimes related to their lack of financial resources and barriers to education and employment. These include "quality of life" crimes (such as loitering or sleeping outside due to lack of financial resources) and "survival" crimes (such as sex work and drug use due to lack of access to education and/or employment). Police profiling of transgender people as sex workers is sometimes referred to as "walking while trans." See the discussion of economic security on page 3 and the report *Paying an Unfair Price: The Financial Penalty for Being Transgender in America* for more information on these interactions.

Higher levels of interaction with law enforcement inevitably leads to higher levels of arrest and incarceration for transgender people. Nearly one in six transgender people (16% overall, including 21% of transgender women) have been incarcerated at some point in their lives—far higher than the rate for the general population. Among black transgender people, nearly half (47%) have been incarcerated at some point.⁶³

While in police custody or incarcerated, transgender people, especially transgender women, are still typically processed, searched, and housed based on their gender assigned at birth rather than their gender identity. These practices contribute to extraordinarily high rates of sexual victimization and abuse, and denials of necessary medical and mental health care.⁶⁴ Reports from the Bureau of Justice Statistics find that 35% of transgender prisoners report experiencing sexual abuse in the last twelve months, compared to 4% of all prisoners.⁶⁵ And one study found that 59% of transgender women in men's prisons report ever being sexually assaulted.⁶⁶ See page 8 above for a discussion on the high rates of police violence faced by transgender people, particularly transgender women and transgender people of color. Transgender people can also be disproportionately denied parole because of a reluctance on the part of judges to place a transgender person at a halfway house program segregated by gender.

Solutions to the disparities addressed above must focus both on reducing incarceration in general and improving conditions of incarceration. Federal and state governments should comprehensively prohibit biased policing (including against transgender people), strengthen civilian oversight of police, and reform sentencing and other laws to reduce reliance on incarceration. The Federal Bureau of Prisons and state and local agencies should presumptively house transgender women in women's facilities, unless the individual objects or a clear and reasonable safety risk is identified. Agencies should establish a standardized process for transgender inmates to make an election whether to be subject to physical searches by male or female officers. States should ban or strictly limit solitary confinement and other forms of prolonged isolation and deprivation.

Monica Jones' Story: "Walking While Trans"

In May 2013, Monica Jones, a student at the Arizona State University School of Social Work and an advocate for transgender people and sex workers, was arrested for "manifesting prostitution." The Phoenix Police Department's Project ROSE (Reaching Out to the Sexually Exploited), and similar anti-prostitution programs and laws around the country, have a disparate impact on women, transgender people, and people of color. Law enforcement assume that all transgender women, particularly women of color, are sex workers and they are unfairly targeted, harassed, and arrested.

Transgender women of color, like Monica Jones, are especially vulnerable to over-policing, unfair targeting, and poor treatment by police and other law enforcement. "Walking while trans" is not a crime and should never be used as an excuse to arrest or interrogate someone. In early 2015, Monica was granted a new trial on the grounds that her original trial was deemed unfair.

Immigration

Transgender immigrants face many barriers to safety and economic security. Many transgender immigrants fled dangerous conditions in countries where being transgender is a crime, or where violence against transgender people is widespread and ignored or perpetrated by the government. Difficulty gaining legal status due to employment discrimination and family rejection, along with increased interactions with law enforcement, mean that transgender immigrants are more likely to be detained and/or deported.⁶⁷ Once detained, transgender immigrants are especially vulnerable to sexual assault and other forms of abuse. Often held in prison-like conditions, transgender immigrants, including asylum seekers, are at high risk of sexual assault, denial of medical care, physical and mental abuse, and placement in solitary confinement.⁶⁸

Congress should pass comprehensive immigration reform to provide a path to legal status for those already living in the United States. U.S. Immigration and Customs Enforcement should implement policies enacted to comply with the Prison Rape Elimination Act (PREA), including protecting transgender people in immigration detention from abuse, permitting transgender women to be housed with other women, and refraining from segregating transgender immigrants in solitary confinement. The Department of Homeland Security should expand the use of alternatives to secure detention and end the detention of asylum-seekers, transgender people, people with HIV, and other vulnerable groups.

CONCLUSION

While the past decade, and especially the past two years, has seen great gains for visibility and equality for transgender people, great disparities remain, particularly for transgender women and transgender people of color. Poorer health and well-being persist, and high rates of discrimination and violence continue to deeply impact transgender people's lives. Advocates, activists, and policy makers are taking steps towards greater protections for transgender Americans.

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