



Reproductive Justice in the Transgender Community

Basic Vocabulary

- **Gender Identity:** A person's internal sense of being male, female, something other, or in between.¹
- **Transgender:** An umbrella term that may be used to describe people whose gender expression is nonconforming and/or whose gender identity is different from their assigned gender at birth.²
- **Cisgender:** An adjective used to refer to a person who does not transcend traditional gender boundaries or a person who by nature or by choice conforms to gender-based expectations of society. Often used in contrast with transgender.³
- **Transsexual:** A term most commonly used to refer to someone who transitions from one gender to another. It includes people who were identified as male at birth but whose gender identity is female, people who were identified as female at birth but whose gender identity is male, and people whose gender identity is neither male nor female. Transition often consists of a change in style of dress, selection of a new name, and a request that people use the correct pronoun when describing them. Transition may, but does not always, include necessary medical care like hormone therapy, counseling, and/or surgery.⁴
- **Sexual Orientation:** A person's emotional and sexual attraction to other people based on the gender of the other person. A person may identify their sexual orientation as heterosexual, lesbian, gay, bisexual, or queer. It is important to understand that sexual orientation and gender identity are different. Not all transgender people identify as gay, lesbian, bisexual, or queer, just as not all gay, lesbian, bisexual, and queer people display gender non-conforming characteristics.⁵

Obtaining a Sex Change

- **Problems with Eligibility Requirements:** Many psychologists are untrained in the issues of gender identity or may try to persuade individuals not to seek sex reassignment or institutionalize them to "fix" their gender presentation.⁶ Also, for many, the option of living as their desired gender without use of hormones may be socially unsafe because they are unable to pass without surgical or hormonal intervention.
- **Medical coverage for Transition:** Most insurance companies will not pay for any part of a sex change;⁷ some will only cover a small portion thereof (such as paying for therapy but not hormones or surgery). Eighty-five employers in the U.S. currently include medical benefits that cover all or some of the medical costs of transitioning.⁸

Gender & Legal Documents

It is essential for transgender people to have legal documents that reflect their gender identity. Certain laws, including those pertaining to marriage and child custody, may require gender identity documentation for people to utilize them.⁹ In addition, traveling, opening a bank account, applying for a job, and numerous other aspects of daily life all require having current identification.¹⁰

- **Changing Gender with the Social Security Administration:** In order to change one's gender designation with the Social Security Administration, the following is required: (1) completed Form SS-5, (2) proof of identity, (3) letter from the surgeon or attending physician verifying that sex reassignment surgery has been completed, (4) proof of citizenship, or if not a U.S. citizen, (5) proof of immigration status and work eligibility.¹¹ This excludes gender non-conforming individuals who do not wish to undergo sex reassignment surgery or who are not able to do so.
- **Changing Gender on a Passport:** In June 2010, the U.S. State Department announced a policy change that will make it easier for transgender people to secure a passport that



Reproductive Justice in the Transgender Community

matches their gender identity.¹² The new rules state that when a passport applicant presents certification from an attending medical physician that the applicant has undergone appropriate clinical treatment for gender transition, the passport will reflect the new gender.¹³ It is also now possible to obtain a limited-validity passport for transitioning individuals, if they present a physician statement showing the applicant is in the process of transitioning.¹⁴ The new policy replaces a rule that required medical documentation that an individual had or was planning to have sex reassignment surgery.¹⁵

- **Changing Gender on a Driver's License:** Rules for changing gender on a driver's license vary from state to state, and individuals must consult the rules of the relevant State Department of Motor Vehicles for the applicable requirements.¹⁶
- **Changing Gender on a Birth Certificate:** Rules for changing gender on a birth certificate vary from state to state.¹⁷

The federal **REAL ID Act of 2005** created new standards and procedures for states to follow in issuing driver's licenses and identity cards, creating a de facto national ID.¹⁸ The legislation set deadlines for states to conform their policies to the Act, which have already been extended numerous times, most recently until January 2013¹⁹ Since Congress approved the REAL ID, 24 states have passed legislation rejecting compliance with REAL ID.²⁰ Transgender advocates oppose REAL ID due to a number of privacy concerns, including the risk of outing transgender people in various situations.²¹ Although some privacy concerns were remedied in the final regulations approved by the Department of Homeland Security in 2008, advocates continue to encourage repeal of the REAL ID Act due to inadequate privacy protections for transgender people.²²

Non-Discrimination Laws

Transgender people face discrimination in many areas of their lives, including health care and employment.²³ A 2008 study conducted in California by the Transgender Law Center revealed that 70% of respondents had experienced some form of workplace harassment or discrimination directly related to their gender identity.²⁴ The preliminary findings of a 2009 study conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force showed that 97% of those surveyed reported experiencing harassment or mistreatment while working.²⁵

- **Federal Protection:** In January 2010, the Obama administration added language to its Equal Employment Opportunity statement to explicitly ban employment discrimination on the basis of gender identity.²⁶ While this only applies to federal jobs, the federal government is the country's largest employer, so this represents a significant advancement in employment protections for transgender people.²⁷ The U.S. Department of Housing and Urban Development instructed staff that discrimination against transgender people can be addressed under existing federal law's ban on gender discrimination.²⁸ Aside from the Administration's recent policy change, federal employment non-discrimination laws do not currently protect individuals who are discriminated against based on their gender identity.
 - The **Employment Non-Discrimination Act (ENDA)** is federal legislation that would provide basic protections against workplace discrimination on the basis of sexual orientation or gender identity.²⁹ It would prohibit public and private employers, employment agencies, and labor unions from using an individual's sexual orientation or gender identity as the basis for employment decisions.³⁰ The legislation was first introduced as ENDA in 1994, and gender identity was added as a category for protection in 2005. Introduced in the 111th Congress by Reps. Barney Frank (D-MA) and Ileana Ros-Lehtinen (R-FL) in the House and Sens. Jeff Merkley (D-OR) and Susan Collins (R-



Reproductive Justice in the Transgender Community

ME) in the Senate, ENDA remains pending before Congress.³¹

- **State Protection:** Thirteen states and the District of Columbia ban discrimination on the basis of gender identity or expression (in addition to sexual orientation).³² As of July 2008, the total number of people living in a jurisdiction with a transgender-inclusive anti-discrimination law in the U.S. is 109 million.³³

Barriers to Accessing Health Care

Transgender people face **massive and systematic discrimination within the health care system** in the United States, ranging from individual instances of humiliation to outright refusals to provide care.³⁴ Advocates have observed a resulting community-wide disengagement from the health care system, which results in dire health outcomes for transgender people.³⁵

- The Transgender Law Center's California Study showed that 30% of respondents reported postponing health care because of disrespect or discrimination by healthcare providers.³⁶ This is especially problematic because in some ways, transgender people have a greater-than-average need for regular health care.³⁷ For example, transition-related hormone treatments and surgical procedures require involvement with health care providers; there is also a high rate of HIV infection among parts of the transgender community.³⁸
- In 2004, the Transgender Health Initiative of New York was formed in response to the widespread discrimination transgender people face when accessing health care.³⁹ One of THINY's first accomplishments was the development of a policy and protocol for providing care to transgender patients in a nondiscriminatory manner.⁴⁰ THINY also works with health care providers in New York City to improve the accessibility of health care services for transgender patients.⁴¹

¹ Transgender Law Center, Transgender Definitions (on file with author). This was created from two sources: The San Francisco Human Rights Commission's Compliance Guidelines to Prohibit Gender Identity Discrimination and the Transgender Law Center's Beyond the Binary: A Tool-Kit for Gender Identity Activism in Schools.

² *Id.* For more background on how "transgender" became the movement's preferred term, see Dean Spade, Documenting Gender, 59 HASTINGS L.J. 731, n.12 (2008).

³ Elizabeth R. Green, , *LGBTQIA Terminology*, UC SAN DIEGO LESBIAN GAY BISEXUAL TRANSGENDER RESOURCE CENTER, http://lgbtro.ucsd.edu/LGBTQIA_Terminology.asp (last visited June 15, 2011).

⁴ *Id.*

⁵ *Id.*

⁶ Courtney Sharp, *Medical Abuse of GLBT Youth*, PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS, <http://community.pflag.org/page.aspx?pid=706> (last visited June 15, 2011).

⁷ *Know Your Rights - Transgender People & the Law*, ACLU, (Nov. 2009) http://www.aclu.org/hiv-aids_lgbt-rights/know-your-rights-transgender-people-and-law (see Does private health insurance cover transition-related surgery or other transition-related medical treatment)

⁸ HUMAN RIGHTS CAMPAIGN, CORPORATE EQUALITY INDEX, LIST OF BUSINESSES WITH TRANSGENDER-INCLUSIVE HEALTH INSURANCE BENEFITS , (Oct. 1, 2010) available at <http://www.hrc.org/issues/workplace/benefits/7644.htm>

⁹ TRANSGENDER LAW CENTER, ID PLEASE...A GUIDE TO CHANGING CALIFORNIA & FEDERAL IDENTITY DOCUMENTS TO MATCH YOUR GENDER IDENTITY,(July 2010) available at <http://transgenderlawcenter.org/pdf/TLC%20ID%20Guide.pdf>

¹⁰ *Federal Policy Changes*, NATIONAL CENTER FOR TRANSGENDER EQUALITY, http://transequality.org/Issues/federal_documents.html (last visited June 15, 2011).

¹¹ *Id.*

¹² Press Release, New Policy on Gender Change in Passport Announced U.S. Dep't of State (June 9, 2010), <http://www.state.gov/r/pa/prs/ps/2010/06/142922.htm>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ NATIONAL CENTER FOR TRANSGENDER EQUALITY, UNDERSTANDING THE NEW PASSPORT GENDER CHANGE POLICY, (Jan. 2011), http://transequality.org/Resources/passports_2011.pdf

¹⁶ See Dean Spade, Documenting Gender, *supra* note 2, at 822 app. I (detailing in chart form each state DMV's requirements for changing gender).



Reproductive Justice in the Transgender Community

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- ¹⁷ *Know Your Rights - Transgender People & the Law*, ACLU, (Nov. 2009) http://www.aclu.org/hiv-aids_lgbt-rights/know-your-rights-transgender-people-and-law (see Can a person get name and gender marker changed on his or her birth certificate)?
- ¹⁸ NATIONAL CENTER FOR TRANSGENDER EQUALITY, THE PASS ID ACT (Aug. 2009), <http://transequality.org/Resources/PassID.pdf>.
- ¹⁹ U.S. DEP'T OF HOMELAND SECURITY, OFFICE OF SECRETARY, MINIMUM STANDARDS FOR DRIVER'S LICENSES & ID CARDS ACCEPTABLE BY FEDERAL AGENCIES FOR OFFICIAL PURPOSES (Mar. 7, 2011), available at <http://www.ncsl.org/documents/statefed/RealIDNotice.pdf>.
- ²⁰ NATIONAL CENTER FOR TRANSGENDER EQUALITY, THE PASS ID ACT, *supra* note 18.
- ²¹ *Id.*
- ²² *Id.*
- ²³ NATIONAL CENTER FOR TRANSGENDER EQUALITY, NATIONAL TRANSGENDER DISCRIMINATION SURVEY (Nov. 2009), available at http://transequality.org/Resources/NCTE_prelim_survey_econ.pdf.
- ²⁴ TRANSGENDER LAW CENTER, STATE OF TRANSGENDER CALIFORNIA (March 2009), available at <http://www.transgenderlawcenter.org/pdf/StateofTransCAFINAL.pdf> (last visited June 15, 2011).
- ²⁵ NATIONAL CENTER FOR TRANSGENDER EQUALITY, NATIONAL TRANSGENDER DISCRIMINATION SURVEY (Nov. 2009), available at http://transequality.org/Resources/NCTE_prelim_survey_econ.pdf.
- ²⁶ CCH Workday Blog, *Federal jobs website bans gender identity discrimination... is ENDA coming next?*, WOLTERS KLUWER LAW & BUSINESS (Jan. 13, 2010), <http://www.employmentlawdaily.com/index.php/2010/01/13/federal-jobs-website-bans-gender-identity-discrimination-is-enda-coming-next/>.
- ²⁷ *Id.*
- ²⁸ *HUD Issues New Guidelines to Address Discrimination*, NATIONAL CENTER FOR TRANSGENDER EQUALITY (July 2010) http://transequality.org/news10.html#HUD_update (last visited June 15, 2011).
- ²⁹ *Employment Non-Discrimination Act*, Human Rights Campaign, http://www.hrc.org/laws_and_elections/enda.asp (last updated May 5, 2011).
- ³⁰ *Id.*
- ³¹ Lisa Keen, *ENDA has the votes, but does it have the priority?*, KEEN NEWS SERVICE (May 14, 2010), <http://www.keennewsservice.com/2010/05/14/enda-has-the-votes-but-does-it-have-the-priority>.
- ³² *State Nondiscrimination Laws in the U.S.*, NATIONAL GAY AND LESBIAN TASK FORCE http://www.thetaskforce.org/downloads/reports/issue_maps/samesex_relationships_7_09.pdf (last updated June 2009).
- ³³ *State and Local Trans-Inclusive Legislation*, National Gay and Lesbian Task Force, at page 7 (2008), www.thetaskforce.org/downloads/reports/fact_sheets/transgender_year_in_review.pdf.
- ³⁴ *Access to Health Care*, TRANSGENDER LEGAL DEFENSE AND EDUCATION FUND, http://www.transgenderlegal.org/work_show.php?id=2 (last visited June 15, 2011).
- ³⁵ *Id.*
- ³⁶ *Id.*
- ³⁷ *Id.*
- ³⁸ *Id.*
- ³⁹ *Transgender Health Initiative of New York*, TRANSGENDER LEGAL DEFENSE AND EDUCATION FUND, http://www.transgenderlegal.org/work_show.php?id=8 (last visited June 15, 2011).
- ⁴⁰ TRANSGENDER LEGAL DEFENSE AND EDUCATION FUND, TRANSGENDER HEALTH INITIATIVE OF NEW YORK, POLICY & PROTOCOL FOR SERVING TRANSGENDER PATIENTS, available at http://www.transgenderlegal.org/media/uploads/doc_22.pdf (last visited June 15, 2011).
- ⁴¹ TRANSGENDER LEGAL DEFENSE AND EDUCATION FUND, TRANSGENDER HEALTH INITIATIVE OF NEW YORK, *supra* note 34.