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# A BLUEPRINT FOR EQUALITY

## A Federal Agenda For Transgender People

UPDATED JUNE 2015 WITH POLICY ADVANCES INCLUDED



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## ACKNOWLEDGEMENTS

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*NCTE wishes to thank our many advocacy partners for their input on this document, and for their ongoing work with us to achieve justice and equality for all.*

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## INTRODUCTION



## INTRODUCTION

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It's hard to believe how much has been accomplished in twelve years. When the National Center for Transgender Equality (NCTE) was founded in 2003, transgender people barely had a voice in the Washington offices where major federal policy decisions take place. Now we're at every relevant meeting, and our impact is felt at almost every table where our issues are discussed. Working in collaboration with our many allies, leveraging our power by working in coalitions on every issue, NCTE has been able to advance an incredibly full agenda despite our small size.

This updated Blueprint for Equality represents a new stage in our movement for transgender equality through federal policy change. We present here another ambitious agenda for the next two years, using strategies we've shown to be effective and relationships we've built with many advocates and federal agencies.

We have also expanded the agenda to include additional important issues that, while they are not unique to transgender people, affect trans people disproportionately. NCTE's theory of change includes the belief that we must work in concert with all communities who face discrimination, violence, or limitations on opportunities because of race, nationality, class, religion, ability, and other dimensions of identity. In addition, issues of economic justice and transgender equality are inseparable. Policy changes focused only on our identities as trans people will not be enough to end disproportionate poverty among trans people. We must also join with others working to challenge economic inequality itself and ensure that people of all backgrounds have a real opportunity to participate and succeed in American life. We need an America that values everyone based on the content of their character and truly provides equal opportunity to all.

### OPENING DOORS FOR TRANS EQUALITY THROUGHOUT THE FEDERAL GOVERNMENT

In contrast to the hostile environment we faced a decade ago, NCTE has been able to work with a federal government that no longer denies the existence of transgender people or our policy concerns. Agencies across the entire federal government are using their authority to enforce federal sex discrimination laws to protect transgender people—including in jobs, education, housing, and health care—and are investigating and resolving complaints accordingly. A huge number of employers with federal government contracts are now covered by explicit LGBT employment protections. Surgical requirements and other barriers for most federal document and record changes have been eliminated. Arbitrary transgender health exclusions have been eliminated from at least some federal health programs. Nondiscrimination and training requirements have been instituted for many key programs conducted or funded by the federal government. The rights of transgender people are a regular part of both domestic policy discussions as well as US human rights policy abroad. This is just a small sampling of the doors we've helped open, working in coalition with our allies, to prepare for the next phase of policy change. NCTE is prepared to use our place at the federal policy table to assertively and smartly represent transgender people and our policy needs throughout the federal government.

## HOW CAN FEDERAL POLICY CHANGE IMPACT TRANSGENDER LIVES?

Given the pervasive barriers to opportunity, justice, and well-being for transgender people today, change must happen on many levels. It must happen in providing help and support for individuals in our communities who are most in need. It must happen in individual conversations with our families, coworkers, and neighbors. It must happen in statehouses and city councils, courtrooms, voting booths, places of worship, and in the streets. The federal government can play an important role in eliminating the structural and systemic barriers that face transgender people and other marginalized communities. Federal policy touches all our lives, whether through the ID documents we carry, safety-net programs we depend on, or ability to get recourse when we've been mistreated. NCTE actively advocates with and educates the dozens of federal agencies that determine the federal policies that impacts trans lives.

In 2011, the release of the National Transgender Discrimination Survey quantified on a national level for the first time what we have always known—trans people face disrespect, discrimination, and violence in all areas of life. This unprecedented national data set played a critical role in many policy advances, and NCTE is now working to conduct a follow-up survey, now called the US Trans Survey to continue these successes into the future.

## AN EVOLVING BLUEPRINT FOR THE NEXT PHASE OF TRANSGENDER FEDERAL POLICY SUCCESS

In 2009, NCTE released our first agenda for federal policy advancement for transgender people and in 2012, we issued an expanded version. We have used these blueprints to educate policymakers and to focus our work and the work of our allies. Over time, however, we have identified additional policies that need to be addressed, as well as policies that have been successfully implemented and no longer need to be listed. Our ever-growing policy expertise has also led us to further refine some of our recommendations. This updated document represents a comprehensive and up-to-date review of federal policies that can impact trans people, providing a blueprint for the next phase of federal policy change. We now also list the federal policy advances we have collectively made so that we may all celebrate the forward movement toward transgender equality together.

## WHAT THIS BLUEPRINT MEANS FOR YOU

One goal for this blueprint is to provide trans people and allies with an understanding of the breadth of the transgender federal agenda. As you read, keep your own policy priorities in mind, and think about how some of these changes could impact your life or the lives of your friends and family members. Think about how you can help advocate for positive changes from your own community by advocating for similar policies at the local or state level.

While some of the work needed to advance federal policy requires specific expertise, these policies are advancing in large part because so many transgender people and our allies around the country are educating the public, the media, members of Congress, and even local and state policymakers, who often become federal policymakers. Visit our website at [www.transequality.org](http://www.transequality.org) for ideas on how you can help us make change all over the country.

## CONSIDERATIONS

When reading this blueprint, please keep the following things in mind:

**Scope:** This agenda focuses exclusively on U.S. public policy at the federal level. Many other efforts are equally important to advancing transgender equality, including state and local advocacy, public education, litigation, media advocacy, working with medical, educational, and other institutions, and providing services directly to transgender people and their families. NCTE and many others continue to work in these vital areas, however, these topics are not discussed here.

**Timing:** While some of the goals in this blueprint may take years to achieve, many are readily achievable in the next two years, and NCTE is working every day with our allies to accomplish them.

**Collaboration:** Smart and effective collaboration with a wide array of partners is a foundation of NCTE's work. When we say that "we" hope to achieve a federal policy goal, we include in that statement the work of our amazing and committed allies, in and outside of the federal government.

**Terminology:** Throughout this document, we use the words transgender and trans interchangeably. In most cases, we mean all people commonly described as transgender or gender nonconforming, including those who have a non-binary gender identity or a non-conforming gender expression. When policies are only relevant for those who transition, that should be clear in the context of the discussion. NCTE believes that all trans people matter and seeks to represent every part of our communities.

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CHAPTER 1:

## ECONOMIC OPPORTUNITY



## ECONOMIC OPPORTUNITY

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More than one in four transgender adults have lost at least one job due to bias, and more than three-fourths have experienced some form of workplace discrimination.<sup>1</sup> Biased refusal to hire, privacy violations, harassment, and even physical and sexual violence on the job are common occurrences, and experienced at even higher rates by transgender people of color. Many report changing jobs to avoid discrimination or the risk of discrimination. Extreme levels of unemployment and poverty lead one in eight to become involved in underground economies—such as sex and drug work—in order to survive.

While 19 states, D.C., Puerto Rico, and over 200 local jurisdictions, and hundreds of employers have adopted clear laws or policies to prohibit this discrimination, half the nation still lives without these critical protections. And while transgender people face unemployment at even higher rates than the rest of the U.S. workforce,<sup>2</sup> they can also face discrimination in the public jobs programs meant to connect them with job opportunities and/or training.

In recent years, courts and federal agencies have increasingly taken the view that discrimination against transgender people is prohibited by existing laws against sex discrimination.<sup>3</sup> This updated understanding of sex discrimination laws, accepted by the Equal Employment Opportunity Commission in 2012 and by the Attorney General in 2014, has the potential to be a powerful tool to combat employment bias. A critical EEOC decision in 2015 also clarified that denying workers access to restrooms consistent with their gender identity constitutes sex discrimination. NCTE has and will continue to work to more firmly establish this understanding of the law and the critical protection it can provide. Ultimately, however, passing a federal law to prohibit gender identity discrimination in the most specific terms is essential to ensuring that employers understand and consistently follow the law, and therefore to eliminating anti-trans discrimination.

Despite new nondiscrimination protections, many workers—including most federal government workers—are still subject to a uniquely discriminatory and baseless across-the-board exclusion of medically necessary, transition-related care from the health benefits they've earned. These discriminatory exclusions are being increasingly abandoned by large employers; 53% of companies surveyed for the 2015 HRC Corporate Equality Index provide inclusive benefits compared to less than 9% in 2009.<sup>4</sup> The federal government in 2014 announced that federal employee plans would no longer be required to discriminate, but stopped short of requiring these plans cover transition-related care. Thus, more is needed to ensure all workers can access the benefits they've earned.

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<sup>1</sup> Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 53. Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force (2011).

<sup>2</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 55.

<sup>3</sup> See, e.g., *Complainant v. McHugh*, E.E.O.C. App. No. 0120133395 (Apr. 1, 2015); Attorney General Memorandum, Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (Dec. 18, 2014); *Macy v. Holder*, E.E.O.C. App. No. 0120120821 (April 20, 2012); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008); *Finkle v. Howard County, Md.*, 12 F.Supp.3d 780 (D.Md. 2014).

<sup>4</sup> Human Rights Campaign, Corporate Equality Index 2015, 30 (2015), available at: <http://hrc.org/cei>.

### **Policy Advances**

- The Occupational Safety and Health Administration (OSHA) issued guidance to employers on ensuring safe and adequate restroom access for transgender workers. (2015)
- The Department of Labor issued national guidelines to all federally funded job centers and employment and training programs to prevent discrimination against LGBT people, including ensuring respect for every person's gender identity. (2015)
- The Equal Employment Opportunity Commission (EEOC) declared that workers have the right to use workplace restrooms consistent with their gender identity, with the case Complainant v. McHugh. (2015)
- The Department of Justice filed a landmark lawsuit against Southeastern Oklahoma State University for firing a transgender professor. (2015)
- The Department of Labor issued guidance for all Job Corps program sites to ensure equal opportunity and respectful treatment for transgender youth. (2015)
- The Attorney General issued a memorandum stating that the Justice Department will interpret federal sex discrimination laws to prohibit bias based on gender identity. (2014)
- The EEOC filed two landmark lawsuits against employers in Florida and Michigan for discrimination against transgender workers. (2014)
- President Obama signed an Executive Order explicitly prohibiting federal contractors and subcontractors from discriminating on the basis of gender identity and sexual orientation. (2014)
- The Equal Employment Opportunity Commission (EEOC) made protecting the rights of LGBT workers a top priority in its four-year strategic plan. (2012)
- The EEOC declared that anti-transgender bias is a form of sex discrimination under Title VII of the Civil Rights Act, with the case Macy v. Holder. (2012)
- The Federal Aviation Administration (FAA) revised its medical certification procedures for transgender pilots to reflect current medical science and eliminate unnecessary obstacles to certification. (2012)

### **Policy Advances: Federal Workforce**

- The Office of Personnel Management (OPM) issued a carrier letter stating that all Federal Employee Health Benefits Plans must no longer contain exclusions for medically necessary, transition-related care for federal employees and their partners and dependents. (2015)
- The Office of Personnel Management (OPM) issued detailed workplace guidance for federal agencies covering employment issues for transgender employees, including privacy and confidentiality, access to facilities, dress standards, and non-discrimination expectations. (2011, updated 2015)
- President Obama signed an Executive Order explicitly protecting federal employees from discrimination on the basis of gender identity. (2014)
- OPM issued new regulations that make clear transgender employees are protected by federal sex discrimination laws. (2014)

- Most federal agencies updated their Equal Opportunity Employment (EEO) policies to reflect *Macy v Holder* which found discrimination against transgender employees to be sex discrimination in violation of Title VII. (2012-2014)
- OPM updated its procedures for personnel records to allow transgender employees to update their name and gender to be consistent with the employee's gender identity. (2011)

### **Needed Policy Changes**

- Congress should pass legislation which would explicitly prohibit discrimination in employment based on gender identity and sexual orientation.
- Congress should raise the national minimum wage to a living wage. Congress should pass the Healthy Families Act to secure paid sick leave for all workers.
- Congress should pass the Ban the Box Act, which would prohibit questions about prior arrests or convictions in employment except in narrow circumstances.
- The President should issue an Executive Order prohibiting questions about prior arrests or convictions in applications for federal employment or federal contractor employment except in narrow circumstances.
- The Equal Employment Opportunity Commission (EEOC) should issue enforcement guidelines pertaining to transgender people based on sex discrimination under Title VII of the Civil Rights Act of 1964, covering such issues as dress codes, access to sex-segregated facilities, and employee benefits.
- The Department of Justice and the EEOC should aggressively pursue litigation to advance the rights of LGBT workers under federal sex discrimination laws and publicize positive resolutions.
- Each federal agency that has yet to do so should issue a policy directive stating that it will ensure that agency employees will not be discriminated against on the basis of gender identity and that transgender discrimination claims will be processed according to Title VII procedures.
- The Occupational Safety and Health Administration (OSHA) should issue a standards interpretation clarifying that employers must provide all workers with full access to sanitary facilities consistent with their gender identity as a matter of health and safety.
- The Occupational Safety and Health Administration (OSHA) should issue a standards interpretation clarifying that employers may designate some multi-user restrooms for use by employees of all genders.
- The Department of Homeland Security, Department of Justice, and other federal agencies should adopt policies providing for the recognition of transgender law enforcement and security officers on the basis of their gender identity for purposes of gender-specific job duties.
- The Office of Personnel Management (OPM) should ensure that all Federal Employee Health Benefits Plans provide the medically necessary, transition-related care for federal employees and their partners and dependents that is called for in OPM's June 2015 carrier letter.
- Office of Personnel Management (OPM) should further strengthen its transgender employee guidelines for federal agencies and make clear that they reflect the requirements of equal opportunity laws; to more clearly protect the rights of workers with non-binary gender identities; and to ensure workers can use their chosen name in email addresses, business cards and other daily uses regardless of whether they have a legal name.
- Office of Personnel Management (OPM) should further update the federal personnel record gender marker policy to allow for certification of gender change by licensed therapists, psychologists, and nurse practitioners.
- The Department of Labor should identify, promote and fund best practices for helping transgender people enter or re-enter the workforce.

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CHAPTER 2:

## HOUSING AND HOMELESSNESS



## HOUSING AND HOMELESSNESS

Shelter is a basic human right, yet trans people face severe discrimination and hardship in many ways as we pursue suitable housing. Whether it is fair participation in the rental and homebuying market or access to homeless shelters, the pervasive nature of discrimination follows trans people home. When trying to rent or buy a home, one in five transgender people (19%) in the U.S. have been refused a home or apartment, and more than one in ten (11%) have been evicted, because of their gender identity.<sup>1</sup> While federal authorities agree that the Fair Housing Act's ban on sex discrimination protects transgender people, lack of awareness and legal clarity mean that discrimination persists. Strong, explicit legal protection from gender identity discrimination is essential to securing equal housing opportunities.

Homelessness is also a critical issue for transgender people, with one in five having experienced homelessness at some time in their lives because of discrimination and/or family rejection.<sup>2</sup> As a result, an estimated 20-40% of the more than 1.6 million homeless youth in the United States are LGBT.<sup>3</sup> A ten-year federal plan to prevent and end homelessness has made significant progress but has been limited by the slow economic recovery and inadequate federal, state, and local investments in affordable housing and programs to quickly help people move into permanent housing. Transgender people facing homelessness also face discrimination from or at agencies that should be helping them, with nearly one in three (29%) reporting being turned away from a shelter due to their transgender status and 22% of those who stayed at a shelter reported experiencing sexual assault from staff or other residents.<sup>4</sup> While leading experts on homelessness recommend providing emergency housing consistent with a person's gender identity,<sup>5</sup> 42% of trans people facing homelessness have been forced to stay in a shelter living as the wrong gender.<sup>6</sup>

### Policy Advances

- The Department of Housing and Urban Development (HUD) issued guidance to homeless shelters and transitional housing programs clarifying that all persons should have access to shelter based on their gender identity. (2015)
- The National LGBTQ Youth Homelessness Prevention Initiative was established by HUD, in cooperation with other federal agencies, which created pilot programs in Houston/Harris County, TX and Cincinnati/Hamilton County, OH to implement cohesive, coordinated plans to address homelessness of LGBTQ youth in these areas, to serve as national models if successful. (2014)
- HUD announced the first federal study of anti-transgender housing discrimination. (2013)
- The HUD, and the Department of Justice (DOJ) filed the government's first transgender Fair Housing Act case in federal court, arguing that the transgender person faced illegal sex discrimination. (2013)
- HUD issued regulation called the Equal Access Rule that bans anti-LGBT bias in all federally-funded housing programs. (2012)

<sup>1</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 112-13.

<sup>2</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 112.

<sup>3</sup> Nico Quintana, Josh Rosenthal, and Jeff Krehely, *On the Streets: The Federal Response to Gay and Transgender Homeless Youth*, 6. Washington, DC: Center for American Progress (2010). Available at: <http://www.americanprogress.org/issues/2010/06/pdf/lgbtyouthhomelessness.pdf>.

<sup>4</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 116.

<sup>5</sup> See, e.g., New York City Division of Adult Services, Procedure No. 06-1-31: Transgender and Intersex Clients (2006); Lisa Mottet and John M. Ohle, *Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People*, at 11-14. Washington, DC: National Gay and Lesbian Task Force and National Coalition for the Homeless (2003). Available at: <http://thetaskforce.org/downloads/reports/reports/TransitioningOur-Shelters.pdf>.

<sup>6</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 118.

- The HUD, and the Department of Justice (DOJ) filed the government's first transgender Fair Housing Act case in federal court, arguing that the transgender person faced illegal sex discrimination. (2013)
- HUD issued regulation that bans anti-LGBT bias in all federally-funded housing programs. (2012)
- Opening Doors federal homelessness plan and Runaway and Homeless Youth Act grants target help for LGBT homeless youth. (2011-ongoing)
- HUD announced that the Fair Housing Act's sex discrimination provisions protect transgender people. (2010)

#### **Needed Policy Changes**

- Congress should pass the Housing Opportunities Made Equal (HOME) Act, which would explicitly prohibit discrimination based on gender identity and sexual orientation in housing and lending.
- Congress should reauthorize and strengthen the Runaway and Homeless Youth Act, including adding a nondiscrimination provision, and fully funding a prevalence and incidence study of runaway and homeless youth, which should include LGBT demographic questions.
- Congress should fully fund implementation of the Federal Strategic Plan to Prevent and End Homelessness, including expanding the nation's supply of affordable housing.
- The Department of Housing and Urban Development (HUD) should use rulemaking to legally codify protections for transgender people to access emergency shelters and other forms of housing consistent with their gender identity under both the Fair Housing Act and the 2012 Equal Access Rule.
- The Departments of Housing and Urban Development and Health and Human Services should implement a unified homeless data collection system for both youth and adults that includes data on gender identity and sexual orientation.
- The Departments of Housing and Urban Development and Health and Human Services should publish and promote best practices for supporting homeless transgender youth.

**ACCEPTED, RESPECTED, AND HOUSED**

**Excerpt from HUD Secretary Julian Castro's remarks at the 2015 Family and Youth Homelessness Conference of the National Alliance to End Homelessness  
February 20, 2015**

It's no secret that a major cause of homelessness among young people is the prejudice associated with being lesbian, gay, bisexual or transgender. So many folks are being thrown out of their homes—or running away from them—because they are being rejected for who they are, and this simply isn't right. It's not who we are as Americans. That's why HUD is taking action.

We've partnered with the True Colors Fund, and other federal agencies, to launch a first-of-its-kind pilot in two communities—Cincinnati and Houston. It focuses on prevention and will go all-in by working with families to address and prevent the conflict that LGBT youth are often subjected to.

Daniella Carter is a 20-year-old advocate working with the Fund who, in her own words, "refuses to be another story of neglect, abuse and shame." She believes that this work will help turn this belief into a reality for her and her peers—and so do I, but we need to keep pushing forward.

HUD is committed to helping lead this fight. I believe it's our duty to ensure equal protection for the LGBT community, especially when someone is turning to a homeless shelter to get back on their feet. Unfortunately transgender Americans often encounter more obstacles when they seek help. In some cases they are turned away.

In others they'll be accepted but placed in a shelter for the wrong gender. And even when they are put in the right shelter, they'll sometimes be segregated and told to use separate facilities.

It's an injustice that any transgender person is mistreated when seeking help, which is why HUD is taking action. Today I'm proud to announce that we're publishing guidance so that providers treat these Americans with the dignity they deserve.

Our nation is at its best when we open our arms, our minds, and our hearts to our fellow Americans in need. And it's our hope that this measure will do its small part in shaping a future where every person is accepted, respected and housed.

CHAPTER 3:

## SAFE AND SUPPORTIVE SCHOOLS



## SAFE AND SUPPORTIVE SCHOOLS

Bullying and violence in schools constitute a safety crisis, impacting the health and educational achievements of transgender youth. The National Transgender Discrimination Survey illustrates the alarming extent of the problem: 78% of respondents who were out as trans or were gender non-conforming while in K-12 school indicated that they had been harassed on the basis of their gender identity/expression, with over one-third (35%) reporting that the harassment escalated to physical assault. The abuse could be so severe that it resulted in almost one-sixth (15%) leaving school to escape.<sup>1</sup> A national survey by GLSEN has found that 80% of transgender youth feel unsafe at school, and those who are able to persevere had significantly lower GPAs, were more likely to miss school out of concern for their safety, and were less likely to plan on continuing their education.<sup>2</sup> Perhaps most alarmingly, 51% of NCTE survey respondents who had been bullied reported attempting suicide.<sup>3</sup>

Critically, however, it is not just hostility from peers that threatens equal opportunity for transgender students. Too often, school officials themselves single out these youth by refusing to respect their gender identity and even punishing them for expressing that identity. Rather than focusing on their education, many students struggle for the ability to come to school and be themselves without being punished for wearing clothes or using facilities consistent with who they are, and are often denied opportunities to go on field trips or participate in sports.

While bullying and the need for LGBT youth support systems have become a national conversation, much of the real change is happening in local school districts and state legislatures because of the hard work of parents, youth, educators, and state equality advocates. These efforts have included adopting anti-discrimination and anti-bullying laws and policies that explicitly include gender identity and expression, as well as developing specific policies and training that spell out what nondiscrimination means in key areas such as dress codes, athletic participation and access to school facilities. NCTE has partnered with the Gay, Lesbian & Straight Education Network (GLSEN) to release a Model School District Policy on Transgender and Gender Nonconforming Students. This essential resource provides clear and specific guidance for schools on preventing bullying, protecting student privacy, and ensuring an equal chance to learn. State and local agencies around the country have used the model policy in developing their own policies.

### Policy Advances

- The Department of Justice (DOJ) filed a first-ever court brief arguing that denying a transgender student access to restrooms consistent with their gender identity may constitute sex-based discrimination under Title IX. (2015)
- The Department of Education issued guidance stating that, under Title IX, transgender students must have the opportunity to participate in single-sex classes and extracurricular activities consistent with their gender identity. (2014)
- The Department of Education issued guidance stating that the federal Title IX sex discrimination law protects transgender students from discrimination and harassment. (2014)
- The Department of Education issued guidance stating that colleges must strengthen sexual assault policies. (2014)
- The Department of Education issued guidance addressing racially disproportionate school discipline—though without acknowledging impacts or protections for LGBT students. (2014)
- The DOJ, Department of Education reached landmark Title IX settlements on behalf of trans students who were not allowed access to facilities or other school opportunities consistent with their gender identity by the Arcadia Unified School District as a potential violation of Title IX. (2013-14)
- The Department of Education issued a Dear Colleague letter to school districts, stating that Title IX prohibits anti-LGBT bullying based on sex stereotypes. (2010)

<sup>1</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 36-38.

<sup>2</sup> Joseph G.Kosciw, Emily A. Greytak, Elizabeth M. Diaz, and Mark J. Bartkiewicz. The 2009 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools, 45-50. New York: GLSEN (2010).

<sup>3</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 45.

### **Needed Policy Advances**

- Congress should pass the Safe Schools Improvement Act, which would ensure that all schools and districts implement comprehensive and effective anti-bullying and anti-harassment policies that specifically include gender identity and sexual orientation.
- Congress should pass the Student Non-Discrimination Act, which would prohibit discrimination in K-12 public schools on the basis of gender identity and sexual orientation.
- Congress should repeal the Souder Amendment and restore access to federal financial aid to students with prior drug convictions.
- Congress should repeal ineffective abstinence-only education programs and pass the Real Education for Health Youth Act to provide comprehensive sexuality education for young people.
- Congress or the Department of Education should mandate that all states provide comprehensive suicide prevention education to all high school students. The mandate should require that the curriculum meets minimum standards, including a discussion of LGBT youth and why they have an increased risk of suicide.
- The President and the Departments of Education and Health and Human Services should continue to devote resources and high-level attention to the problems of bullying, harassment, and peer violence, and should include explicit discussion of transgender youth as a part of those efforts.
- The Department of Education should issue guidance clarifying the application of Title IX antidiscrimination protections to transgender youth, including the right of all students to dress, access school facilities, programs and campus housing, and otherwise be treated in accord with their gender identity and have their privacy protected.
- The Department of Education should issue guidance clarifying the application of the Family Education Rights and Privacy Act (FERPA) to the privacy of information concerning a student's transgender status, including sex assigned at birth, birth name, and medical history.
- The Departments of Justice and Education should aggressively pursue Title IX complaints and litigation to advance the rights of LGBT students and publicize positive resolutions.
- The Department of Education should enhance the transparency and effectiveness of Title IX enforcement by tracking and reporting data on LGBT-related claims and by providing transgender-inclusive training for all Title IX officers.
- The National Center for Education Statistics should ensure that data collection includes detailed information about bullying, harassment, and other school violence, including whether incidents were motivated by a victim's gender identity or expression.
- The Departments of Education and Health and Human Services should develop new cultural competence and best practice resources for schools focusing on transgender students and preventing their victimization.
- The Departments of Health and Human Services should strengthen criteria for its Evidence-based Teen Pregnancy Prevention Programs list and eliminate inaccurate and ineffective abstinence-only programs.
- The Department of Education should provide guidance for transgender students on completing the Free Application for Federal Student Aid (FAFSA) and should work with schools, the Selective Service System, and the Social Security Administration to ensure that applications are not unduly delayed or rejected because of gender documentation issues.

See *Counting Trans People in Federal Surveys* for more on youth-focused surveys.

See *Housing and Homelessness* for more on LGBTQ youth homelessness.

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CHAPTER 4:

## ACCESS TO QUALITY HEALTH CARE



## ACCESS TO QUALITY HEALTH CARE

In a groundbreaking 2011 report, the U.S. Institute of Medicine (IOM) found that transgender people in the United States face serious health disparities and systemic barriers to care. These disparities are particularly acute for transgender people of color. At the same time, transgender people are more likely to be uninsured, to be unable to afford to pay for health care out of pocket, and to delay seeking health care because of cost or fear of discrimination.<sup>1</sup> The IOM report, together with the recognition of LGBT health disparities in federal efforts such as Healthy People 2020 and the National Prevention Strategy, represent important steps toward integrating these issues into broader efforts to improve the nation's health and combat all disparities. Still, federal efforts to address the health of transgender people have only just begun.

Discrimination against transgender people seeking health care is an urgent and widespread problem. For example, one-fifth of respondents in the National Transgender Discrimination Survey (NTDS) reported being turned away outright by a health care provider due to bias.<sup>2</sup> Twenty-eight percent (28%) postponed or avoided medical treatment when they were sick or injured and 33% delayed or did not try to get preventive health care because they feared discrimination.<sup>3</sup>

Building the cultural competency of health care providers is critically important to the health of transgender people and is a vital corollary to nondiscrimination protections. Health care providers and support staff must become more knowledgeable about trans people's health care needs and how to best address these needs. They must be able to communicate with trans people respectfully and sensitively, and treat information about a patient's transgender status as confidential. Fifty percent of NTDS respondents reported having to teach providers about their health needs.<sup>4</sup>

Difficulties in accessing health care arise for many transgender people even before they get to a doctor's office or hospital. Despite strides in expanding the number of people in the United States who are able to secure adequate health insurance, plans still frequently exclude coverage of any services for a transition-related medical purpose, even when the same or comparable services are routinely covered for other medical indications. These arbitrary exclusions have no scientific basis and create a dangerous gap in access to quality and affordable care for transgender people. Leading employers, universities, and city and state governments are rapidly expanding employment-based coverage for transition related care, yet discrimination exclusions remain in most insurance plans. While 9 states and the District of Columbia have so far issued bulletins directing insurance plans to eliminate exclusions, there has been no guidance from the federal government.

The Institute of Medicine has recommended that data on gender identity and sexual orientation be routinely collected in electronic health records and in federally funded health surveys, and that the federal government provide expanded support for health research on transgender people.<sup>5</sup> To adequately understand and meet the health needs of transgender people, systematic research and data collection on our population is essential. Until now, the absence of even the most basic demographic and health data on transgender people has been a major roadblock to improving health and eliminating disparities for trans people.

### Policy Advances

- Medicare's long-standing exclusion for transition-related surgery was overturned. (2014)
- The Department of Health and Human Services (HHS) published LGBT-inclusive National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care. (2014)

<sup>1</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 76.

<sup>2</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 75.

<sup>3</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 76.

<sup>4</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 76.

<sup>5</sup>IOM, The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding, p. 299-304 (2011).

- The Department of Health and Human Services (HHS) released an updated, LGBT-inclusive guide for substance abuse treatment providers. (2013)
- HHS said, in a letter to advocacy organizations, that the Affordable Care Act's sex discrimination provision prohibits anti-transgender bias in health care settings. (2012)
- HHS issued regulations prohibiting anti-LGBT bias in state insurance marketplaces. (2012)
- The Joint Commission made LGBT nondiscrimination policies a requirement for hospital accreditation. (2011)
- HHS issued regulations that prohibit discrimination against LGBT people in hospital visitation. (2011)
- The Department of Health and Human Services (HHS) issued guidance outlining consumers' rights to coverage of preventive services, making clear that plans may not deny routine screenings or other services solely because of a person's gender identity, gender assigned at birth, or the gender in their insurance record. (2015)

#### **Needed Policy Changes**

- Congress should pass the Health Equity and Accountability Act, which would strengthen federal action to combat health disparities, including those correlated to gender identity and sexual orientation.
- Congress should pass legislation prohibiting deceptive and harmful "conversion therapies" that attempt to change a person's gender identity or sexual orientation.
- The Department of Health and Human Services should promulgate regulations prohibiting discrimination on the basis of gender identity and sexual orientation by health care providers and programs, both as a condition of Medicare and Medicaid participation and for all recipients of federal financial assistance pursuant to Section 1557 of the Affordable Care Act.
- The Department of Health and Human Services should issue strong federal guidance on discrimination in essential health benefits under the Affordable Care Act, including clarifying that arbitrary transgender exclusions constitute a form of prohibited discrimination.
- The Departments of Justice and HHS should aggressively pursue Section 1557, HIPAA and other complaints and litigation to advance the rights of LGBT people in health care settings, and publicize positive resolutions.
- The Center for Medicare Services should ensure that Medicare and its contractors cover all medically necessary care for gender dysphoria as provided in the WPATH Standards of Care, without unfounded restrictions.
- The Office of the National Coordinator for Health Information Technology should require the collection of data on gender identity and sexual orientation within its meaningful use standards for electronic health records, together with strong privacy protections.
- The Department of Health and Human Services should allow federally qualified health centers (FQHCs) to use local data to determine the health needs of LGBT people and people living with HIV/ AIDS in their areas and should provide support to FQHCs specifically serving these populations.
- The Agency for Healthcare Research and Quality (AHRQ) and the National Institutes of Health should formally designate LGBT people as a health disparity population for purposes of federal grants and research.
- The National Institutes of Health should establish and implement a robust LGBT health research agenda that includes a specific focus on the health and health care needs of transgender people, according to the recommendation of the 2011 Institute of Medicine report on LGBT health.

- The Food and Drug Administration should lift the ban on blood donation by men who have sex with men, which has also been used to exclude transgender donors regardless of their gender or sexual orientation.
- The Department of Health and Human Services should identify and promote best practices for providing effective, culturally competent, and nondiscriminatory care to LGBT patients in Title X Family Planning Clinics.
- The Centers for Medicare & Medicaid Services should issue guidance to state Medicaid directors clarifying that the arbitrary exclusion of medically necessary, transition-related care is inconsistent with federal law.
- The Office of Global Affairs should engage with the World Health Organization (WHO) to support appropriate revisions to the International Classification of Diseases (ICD) to de-pathologize gender variance and reflect current medical science regarding gender identity.

See *Improving the Lives of Trans Older Adults* for more on Medicare and long-term care.

See *Honor Our Veterans* for more on veterans' health care.

See *Counting Trans People in Federal Surveys* for more on federal health surveys.

See *Fighting HIV/AIDS* for more on HIV/AIDS policy.

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**CHAPTER 5:**  
**FIGHTING HIV/AIDS**



## FIGHTING HIV/AIDS

Overall, transgender people face HIV infection rates many times higher than the general population, and rates for transgender people of color are even higher.<sup>1</sup> Estimates are that one in four Black transgender people in the U.S. is living with HIV/AIDS.<sup>2</sup>

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 Prevention Strategy issued in 2010 for the first time recognized that transgender people are at high risk for HIV infection, and that until recently only minimal efforts have been made to target the trans population for prevention and treatment. Where transgender people have been included at all, they have often been inaccurately and unhelpfully lumped together with “Men who Have Sex With Men” (MSM) rather than addressed as a distinct population.<sup>3</sup> This neglect has been deadly, because research has shown that such concentrated epidemics require targeted responses for the most at-risk populations.

Notably, while transgender people face high levels of HIV infection around the world, the U.S. has not yet taken concerted action to promote targeted prevention efforts for trans people globally.

### Policy Advances

- The Department of Justice urged states to repeal or reform HIV criminalization laws. (2014)
- The Supreme Court partially overturned the so-called “anti-prostitution pledge,” which denied international HIV/AIDS and anti-trafficking funds to groups that support sex workers. (2013)
- The Centers for Disease Control and Prevention (CDC) revised the national HIV reporting system to allow state and local agencies to collect identifiable transgender data. (2012)
- CDC released its first transgender-specific HIV prevention grant announcements. (2012)
- The White House released the first ever National HIV/AIDS Strategy, acknowledging high rates of HIV infection among transgender people and call for prevention efforts focusing on transgender people. (2010)

### Needed Policy Changes

- Congress should ensure that appropriations and any deficit reduction measures are consistent with the goals of the National HIV/AIDS Strategy and the latest epidemiological data and targeted to the highest prevalence populations and communities.
- Congress should ensure continuation of the Ryan White HIV/AIDS Program as a safety net and provider of support services as healthcare reform is fully implemented.
- Congress should fully fund comprehensive sexuality education and defund ineffective and dangerous abstinence-only-until-marriage programs.
- The CDC should issue strong guidelines for state and local agencies on collecting identifiable transgender data in HIV reporting.
- The Office of National AIDS Policy and the Department of Health and Human Services (HHS) should promote and provide sustainable funding for peer-led prevention and treatment programs focused specifically on transgender populations.
- The Office of National AIDS Policy and HHS should promote, fund, and conduct research focusing on transgender men who have sex with men.

<sup>1</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 80; Centers for Disease Control and Prevention, HIV Infection Among Transgender People (2011). Available at: <http://www.cdc.gov/hiv/transgender/pdf/transgender.pdf>.

<sup>2</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 80.

<sup>3</sup>White House Office of National AIDS Policy, National HIV/AIDS Strategy for the United States, at 14-15 (2010). Available at: <http://www.whitehouse.gov/sites/default/files/uploads/NHAS.pdf>.

- The Centers for Disease Control and Prevention and DOJ should study the recommendation of the World Health Organization that all countries decriminalize sex work and drug use and work with the Department of Justice to make law and policy recommendations to Congress and the states to ensure that laws and enforcement practices do not conflict with public health strategies.
- Congress and the Administration should take further action to encourage states to narrow or repeal HIV criminalization laws that are inconsistent with current science and harmful to public health.
- Congress should fully repeal the so-called “anti-prostitution pledge” which denies international HIV/AIDS and anti-trafficking funds to groups that support sex workers.
- The CDC and the Department of Justice should implement comprehensive HIV prevention strategies for correctional facilities (including the Federal Bureau of Prisons) that include access to condoms.
- The President’s Emergency Plan for AIDS Relief (PEPFAR) should issue guidance for international HIV prevention efforts targeted at transgender people.
- The President’s Emergency Plan for AIDS Relief (PEPFAR) should require all PEPFAR-funded programs to certify that they do not discriminate against LGBT people.

*For more on domestic policy toward sex work, see *Reforming Police and Ending Anti-Transgender Violence**

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CHAPTER 6:

## **REFORMING POLICE AND ENDING ANTI-TRANSGENDER VIOLENCE**



## REFORMING POLICE AND ENDING ANTI-TRANSGENDER VIOLENCE

Transgender people today face an epidemic of anti-trans violence. Whether it occurs on our streets, in our schools, in our homes, or at the hands of law enforcement or other government officials, staggering levels of violence persist even as trans equality advances. The annual Transgender Day of Remembrance serves as a somber reminder of the losses suffered because of senseless and unjust acts of cruelty against transgender people. Twenty-six percent of respondents in the National Transgender Discrimination Survey have been physically assaulted on at least one occasion because of anti-trans bias.<sup>1</sup> Transgender people of color and transgender women are disproportionately affected, with nearly 3 out of 4 of lethal anti-LGBT hate crimes committed against trans women and girls.<sup>2</sup> Transgender people also experience heightened rates of domestic violence and sexual assault and are frequently re-victimized when they seek help.

Unfortunately, Law enforcement is as often a part of the problem as it is part of the solution. Half of transgender people report they are uncomfortable seeking police assistance.<sup>3</sup> More than one-fifth (22%) of transgender people who had interacted with police reported police harassment, and 6% of transgender individuals reported that they experienced bias-motivated assault by officers. Black transgender people reported much higher rates of biased harassment and assault (38% and 15%).<sup>4</sup> NCTE and transgender advocates around the country have joined national efforts to demand police accountability and end racial profiling and other forms of discriminatory policing.

Transgender people who have done sex work or other activities in the street economy are often the most at risk for police violence—this includes 16% of all trans people, 34% of Latino/a trans people, and 53% of Black trans people.<sup>5</sup> Trans people who have done street economy work are more than twice as likely to report physical assaults by police officers and four times as likely to report sexual assault by police.<sup>6</sup> NCTE believes that dangerous conditions fostered by criminalization and police abuse are the primary threat to the safety of sex workers.

NCTE advocates for oversight, training, and policy changes for law enforcement, victim service providers, the courts, and other systems that impact anti-transgender violence and survivors of violence, as well as for data collection and research on violence against transgender people. We also advocate for reforms that would reduce the violence faced by sex workers and drug users by decriminalizing their behavior and emphasizing support and harm reduction over law enforcement.

### Policy Advances

- The President's Task Force on 21st Century Policing recommended establishing LGBT-inclusive anti-profiling and anti-bias policies and training for police departments, and LGBT-inclusive research on the public's contacts with police. (2015)
- DOJ issued guidance prohibiting profiling by federal law enforcement agencies based on race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity--though with dangerous loopholes for airport security or border or customs officials.
- DOJ issued guidance stating that VAWA grantees must respect the gender self-identification of survivors of violence, meaning that women's shelters must accept transgender women. (2014)
- DOJ made transgender cultural competency training available to law enforcement agencies through its Community Relations Service. (2014)

<sup>1</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 80.

<sup>2</sup> National Coalition of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2013. New York, NY: NCAVP (2014). Available at: [http://avp.org/storage/documents/2013\\_ncavp\\_hvreport\\_final.pdf](http://avp.org/storage/documents/2013_ncavp_hvreport_final.pdf).

<sup>3</sup> NTDS, 162.

<sup>4</sup> NTDS, 160.

<sup>5</sup> NTDS, 64.

<sup>6</sup> NTDS, 160.

- HHS required all domestic violence service grantees to adopt LGBT non-discrimination policies. (2013)
- Congress explicitly banned discrimination based on gender identity, sexual orientation, and sex in the Violence Against Women Act, which applies to all VAWA-funded programs. (2013)
- The FBI produced a new, trans-inclusive hate crime Training Manual and Hate Crimes Statistics Form for law enforcement agencies. (2012)
- DOJ settled with the New Orleans police over excessive force and profiling and it is the first police settlement to address anti-trans bias in policing. (2012)
- Congress passed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act , providing federal support to state and local authorities to address hate crimes, and adding gender identity to hate crimes data collection. (2009)

#### **Needed Policy Changes**

- Congress should pass the End Racial Profiling Act, which would explicitly prohibit profiling on the basis of race, national origin, religion, gender, sexual orientation, or gender identity by federal, state, and local law enforcement agencies.
- The Department of Justice should take strong actions to implement the recommendations of the President's Task Force on 21st Century Policing, including by conditioning federal grants to law enforcement agencies on adopting LGBT-inclusive anti-profiling and anti-bias policies.
- The Department of Justice should issue strong regulations to implement the Violence Against Women Act's nondiscrimination provisions, including ensuring that transgender individuals have access to services and programs consistent with their gender identity.
- The Departments of Justice, Health and Human Services, and others agencies should ensure that efforts to combat human trafficking prioritize harm-reduction-based services and other needs identified by affected individuals themselves over "end demand" and law enforcement-based responses.
- The Centers for Disease Control and Prevention and DOJ should study the recommendation of the World Health Organization that all countries decriminalize sex work and drug use and work with the Department of Justice to make law and policy recommendations to Congress and the states to ensure that laws and enforcement practices do not conflict with public health strategies.
- The Department of Justice should require that gender identity and sexual orientation data be collected whenever demographic data is collected in programs for victims of crime.

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**CHAPTER 7:**  
**IMPROVING THE LIVES OF TRANS OLDER ADULTS**



## IMPROVING THE LIVES OF TRANS OLDER ADULTS

According to the national Caring and Aging with Pride survey, transgender older adults are a “critically underserved population at heightened risk of physical and mental health disparities often combined with less social and community support.” The same survey found that 40% of transgender older adults have been denied health care or received inferior care due to anti-trans bias.<sup>1</sup> A recent survey of 320 area agencies and state units on aging found that more than one in four reported that transgender older adults would either not be welcomed by local service providers or the agency was unsure of how welcome they would be.<sup>2</sup> Other research has revealed discrimination and abuse of transgender residents in long-term care facilities.<sup>3</sup>

In 2011-2012, NCTE partnered with Services and Advocacy for GLBT Elders (SAGE) to develop an advocacy agenda focused on the needs of older transgender people. While the challenges common to LGBT older adults have gained increased visibility in recent years, little study or discussion has focused on the specific needs and challenges facing transgender people as they age. NCTE and SAGE convened an advisory group of advocates and experts to focus on this issue over the course of the year. The advisory group included organizations such as FORGE, the Transgender Law Center, the National Center for Lesbian Rights, the Freedom Center for Social Justice, and the National Association of Area Agencies on Aging, as well as community activists and health providers. The group identified a wide array of key issues for older trans adults, including support from faith communities, cultural competence in aging and long-term care services, Medicare and veterans’ health coverage, research and data collection on older trans adults, and the continued need for employment opportunities as trans people age. The result was a 50-page report, *Improving the Lives of Transgender Older Adults*, which provides an introduction to transgender issues for aging advocates and provides more than 60 recommendations for policymakers and practitioners.

### **Policy Advances:**

- HHS released LGBT cultural competency online training tool for long-term care providers. (2014)
- The National LGBT Aging Resource Center is funded by HHS, an online resource center for older aging LGBT people and service providers. (2010)

### **Needed Policy Changes**

- Congress should reauthorize the Older Americans Act and amend the Act to make explicit that LGBT older adults constitute a group with “greatest social need” and that federally-funded service providers may not exclude LGBT older adults from programs and services.
- Congress should fully fund implementation of the Elder Justice Act, and the Department of Health and Human Services should ensure that programs supported by the law give adequate attention to the vulnerabilities of LGBT older adults.
- The Administration on Aging should clarify through formal interpretive guidance that LGBT older adults constitute a group with “greatest social need” and that federally-funded service providers may not exclude LGBT older adults from programs and services.
- The Centers for Medicare & Medicaid Services should revise federal nursing home guidelines to clarify the rights of LGBT residents to freedom from discriminatory abuse, personal privacy and dignity, and treatment consistent with a resident’s gender identity.
- The Centers for Medicare & Medicaid Services should revise federal Medicaid regulations to explicitly prohibit discrimination based on gender identity and sexual orientation in home- and community-based services.
- The Centers for Medicare & Medicaid Services and the Administration on Aging should develop and promote additional LGBT competence tools and training for long-term care facility staff, surveyors and ombudspersons, home care providers, and others who work with older adults, and incorporate LGBT rights into consumer education materials.

See *Access to Quality Health Care* for more on health care policy.

See *ID Documents and Privacy* for more on Medicare cards and Social Security records.

<sup>1</sup> Karen I. Frederickson-Goldsen et al., *The Aging and Health Report: Disparities and Resilience Among Lesbian, Gay, Bisexual and Transgender Older Adults*, at 5, 31. Available at: <http://caringandaging.org/wordpress/wp-content/uploads/2011/05/Full-Report-FINAL.pdf>.

<sup>2</sup> Kelly Abel Knochel, Catherine F. Croghan, Rajean P. Moore, and Jean K. Quam, *Ready to Serve? The Aging Network and LGBT and T Older Adults*, at 12. Washington, DC: National Association of Area Agencies on Aging, 2011. Available at: <http://www.n4a.org/pdf/ReadyToServe1.pdf>.

<sup>3</sup> National Senior Citizens Law Center, et al., *Stories from the Field: LGBT Older Adults in Long-Term Care Facilities*. Washington, DC: NSCLC (2011). Available at: <http://www.lgbtlongtermcare.org/>.

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CHAPTER 8:

## COUNTING TRANS PEOPLE IN FEDERAL SURVEYS



## COUNTING TRANS PEOPLE IN FEDERAL SURVEYS

The persistent lack of data on transgender people's lives from authoritative federal surveys is one of the greatest policy failures facing the trans movement today. Because research and data drive laws, policies, and funding for the critical needs affecting our communities, it is essential that the federal government use the research it does—especially its population-based surveys—to measure the realities of life for various types of people. If people such as trans people are not counted, it is far less likely that our concerns will be effectively addressed. A growing number of states are including demographic data on transgender people in statewide surveys. Despite supportive statements from agency leaders, to date researchers and program managers at federal agencies have failed to develop, test, and include measures that will effectively identify transgender people and reflect our lives in these surveys.

### **Policy Advances**

- The Centers for Disease Control and Prevention (CDC) added an optional state question on gender expression to the Youth Risk Behavior Survey. (2013)
- The CDC added an optional state question on gender identity to the Behavioral Risk Factor Surveillance System, the nation's system of health behavior surveys for adults. (2013)

### **Needed Policy Changes**

- The Department of Health and Human Services should work with research experts to develop effective gender identity measures for federal surveys.
- The Department of Health and Human Services should include gender identity measures in federal health surveys including the National Health Interview Survey, the Behavioral Risk Factor Surveillance System, and the Youth Risk Behavior Survey.
- The Department of Labor should include gender identity and sexual orientation measures in economic surveys including the Current Population Survey and the Survey on Income and Program Participation.
- The Department of Justice should include gender identity and sexual orientation measures in justice and corrections surveys including the National Crime Victimization Survey and the National Survey of Youth in Custody.
- The Census Bureau should include gender identity and sexual orientation measures in the American Community Surveys and other surveys.
- The Federal Bureau of Investigation should include gender identity-related measures in the National Incident-Based Reporting System.

See *Access to Quality Health Care* for more on transgender health research.

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**CHAPTER 9:**  
**ID DOCUMENTS AND PRIVACY**



## ID DOCUMENTS AND PRIVACY

In today's world, identification documents are needed to travel, open bank accounts, start new jobs, purchase alcohol, and even to purchase some cold medicines. Recent voter suppression efforts by some state legislatures have made voting an activity in which trans people without accurate ID may face unfair difficulties.

Historically, state and federal governments have imposed intrusive and burdensome requirements—such as proof of surgery and court orders—that have made it impossible for many trans people to obtain accurate and consistent ID. For many people, financial barriers, medical contraindications or simply a lack of medical need for surgeries make these requirements impossible to satisfy.

As a result, out of those National Transgender Discrimination Survey respondents who had transitioned, only one-fifth (21%) had been able to update all of their IDs and records with their new gender. One-third (33%) had not updated any IDs or records. 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.<sup>1</sup>

The survey results also confirmed what most trans people already knew—that gender-incongruent identification exposes people to a range of negative outcomes, from denial of employment, housing, and public benefits to harassment and physical violence.<sup>2</sup> Because of the work done by NCTE and activists around the country, this trend is now reversing quickly. About half of states no longer impose such burdensome requirements for driver's licenses and state IDs and growing numbers are streamlining procedures. NCTE has worked with the American Association of Motor Vehicles Agencies to educate state agencies about current best practices. Since 2010, onerous requirements for gender change on federal documents and records such as passports and green cards have also been eliminated. State-level efforts have won improvements in birth certificate laws and policies in California, Oregon, New York, Connecticut, Maryland, Vermont, Washington State and the District of Columbia.

These developments represent a growing recognition that older, more restrictive policies have served little, if any, purpose, and that reasonable policies enabling everyone to obtain accurate and consistent ID best serve both government agencies and individuals. There is still more to do, however. While eliminating the most draconian requirements for ID change, many existing federal and state policies are still unduly burdensome in requiring medical certifications from physicians, rather than accepting certifications from therapists or other non-physician health providers, or simply from the individuals themselves.

In addition to ID documents, other government records and programs unintentionally cause the disclosure of information about a person's transgender status without their consent. Chief among these are computer matching programs used by the Social Security Administration (SSA) for identity verification, which have outed individuals when gender data is inconsistent between records. In response to NCTE's efforts, SSA announced in 2011 that it would halt gender matching in its Social Security Number Verification System, the largest matching service used by private employers. This change alone has prevented workplace problems for many trans people. However, automated gender matching has not yet been eliminated in other SSA programs used to share data with state programs and other entities. Government should not needlessly compel the disclosure of a person's medical history or transgender status. The federal government has taken important steps to end these problems and should act promptly to modernize and harmonize policies across agencies.

Ultimately, listing gender on driver's licenses, state ID cards and many other documents is simply unnecessary and should be eliminated.

### Policy Advances

- The Department of Defense began issuing updated military service records reflecting transgender veterans' current names. (2014)
- The Social Security Administration (SSA) modernized its long-standing policy on gender marker changes in SSA records to no longer require sex reassignment surgery. (2013)

<sup>1</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 140-50.

<sup>2</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 152-53.

- The Department of Defense began updating employment and pension records for military retirees, dependents, and contractors without proof of surgery following a procedure similar to other federal agencies. (2014)
- The Railroad Retirement Board adopted a gender marker change policies for beneficiaries, based on the Social Security Administration policy. (2013)
- The Department of Homeland Security updated its immigration document gender change rules. (2012)
- The Department of State modernized its policy on updating gender on Passports to eliminate the sex reassignment surgery requirement, replacing it with a requirement that the person has had appropriate clinical treatment for them as an individual. This policy also applies to Consular Reports of Birth Abroad. (2010)
- The Department of Homeland Security updated its immigration document gender change rules. (2012)
- SSA eliminated gender-matching when matching other data with private employers (2011)
- The Department of State modernized its policy on updating gender on US passports and Consular Reports of Birth Abroad to eliminate the surgery requirement, replacing it with a requirement that the person has had appropriate clinical treatment for them as an individual. (2010)

#### **Needed Policy Changes**

- Congress should repeal the REAL ID Act and eliminate the requirement for listing gender on driver's licenses and state ID cards.
- The Department of State should further update the passport gender marker policy to allow for certification of gender change by licensed therapists, psychologists, and nurse practitioners, and to eliminate remaining burdensome procedural requirements.
- The Social Security Administration should eliminate computer matching of gender data in all remaining data-matching programs.
- The Social Security Administration should further update the Social Security record gender marker policy to allow for certification of gender change by licensed therapists, psychologists, and nurse practitioners.
- The Center for Medicare and Medicaid Services should remove sex as a data field on Medicare cards.
- The National Center for Health Statistics should issue an updated Model State Vital Statistics Act that provides for gender change on birth certificates based on certification from a mental health or medical provider, without proof of specific medical or surgical procedures and without a court order.
- US Citizenship and Immigration Services (USCIS) should reduce the \$465 fee for changing name or gender on immigration documents.
- The Office of Management and Budget should review all new government forms and updates to forms to eliminate collection of gender data in cases where it does not serve a clear programmatic purpose.

See *Economic Opportunity* for more on federal personnel records.

See *Honoring Our Veterans* for more on records for military veterans, retirees, and dependents.

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**CHAPTER 10:**  
**THE RIGHT TO TRAVEL**



## THE RIGHT TO TRAVEL

In recent years, many Americans have been disturbed by the decision of the Transportation Security Agency (TSA) to implement airport screening procedures that are far more intrusive than anything previously seen in the United States. These techniques—which often include intrusive body searches of passengers—present especially serious concerns for transgender people, who can be outed against their will only to face bias and harassment. These screening procedures can be especially traumatic for transgender children. In the National Transgender Discrimination Survey—which includes data collected before these more intrusive techniques were introduced—nearly one in five transgender travelers reported having been harassed or disrespected by airport security screeners or other airport workers.<sup>1</sup>

In 2011, the TSA began phasing in new screening technology that replaces electronic viewing of images of passengers' unclothed bodies with automated detection of potentially hazardous objects. This technology mitigates some privacy concerns but has not changed the frequent use of intrusive pat-downs. NCTE continues to hear troubling stories from transgender travelers about their treatment by TSA, as well as by officials at U.S. border crossings. While NCTE has long worked with TSA to promote better staff training, respond to individual complaints, and educate the trans traveling public, the agency's lack of transparency and persistent use of invasive and unproven security procedures are a continuing cause for concern.

### Policy Advances

- The Transportation Security Administration (TSA) updated all scanners to show only a generic body outline rather than images of passengers' actual bodies. (2013)

### Needed Policy Changes

- The Transportation Security Administration should adopt more effective and less intrusive airport screening protocols that reduce the frequency of pat-downs and do not require additional screening of transgender travelers based solely on their personal characteristics, prosthetics, or clothing.
- The Transportation Security Administration should include transgender competence in its basic training curriculum for airport security screeners and other Transportation Security Officers.
- U.S. Customs and Border Protection (CBP) should include transgender competence in its basic training curriculum for CBP agents.

*See *Immigration Reform* for more on border enforcement and other immigration policies.*

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<sup>1</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 130, 132.

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CHAPTER 11:

## EQUAL ACCESS TO PUBLIC PROGRAMS



## EQUAL ACCESS TO PUBLIC PROGRAMS

All people should be able to access government services and publicly funded programs without fear that they will be turned away or mistreated because of who they are. Yet transgender and gender nonconforming people still face untenable levels of disrespect, discrimination, and even violence accessing public programs and social services.

In fact, the National Transgender Discrimination Survey showed that 32% of trans people reported experiencing harassment, discrimination, or violence when trying to access a government service or program.<sup>1</sup> This kind of publicly supported discrimination is unacceptable, and contrary to the goals of programs designed to serve public needs. For these reasons, federal agencies have the power to ban anti-LGBT bias in programs and activities they fund or conduct. While some have done so most have not, or have done so only for some programs but not all. Broad action across the government is needed to ensure that transgender people are not unfairly denied access to a public program or service.

### **Policy Advances**

- US Department of Agriculture (USDA) banned gender identity bias in USDA-run programs. (2014)
- HHS requires domestic violence programs to adopt LGBT anti-bias policy. (2013)\*
- HHS began requiring LGBT-inclusive nondiscrimination provisions in all public service contracts. (2012)
- Social Security Administration banned gender identity bias in its programs and issues cultural competence guidelines to employees. (2013)
- Congress explicitly banned anti-LGBT bias in Violence Against Women Act Programs. (2013)\*
- HUD regulation banned anti-LGBT bias in federally-funded housing program. (2012)\*
- Federal Protective Service adopted guidance to ensure equal access to gender-appropriate restrooms in federal buildings. (2012)
- The Veterans Health Administration issued a directive on nondiscriminatory health care for transgender veterans. (2011)\*

*\*- Notes Policy Advances also listed in other chapters of this Blueprint*

### **Needed Policy Changes**

- Each federal department and independent agency should adopt a formal regulation or policy prohibiting discrimination based on gender identity and sexual orientation in all programs it conducts or funds, and requiring appropriate staff training, including the following key agencies and departments:
  - Department of Agriculture (USDA)
  - Department of Commerce
  - Department of Education
  - Department of Health and Human Services
  - Department of Homeland Security
  - Department of Justice
  - Department of Labor

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<sup>1</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 133.

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**CHAPTER 12:**  
**IMMIGRATION REFORM**



## IMMIGRATION REFORM

In the absence of meaningful immigration reform, millions of individuals and families in the United States will continue to face unspeakable hardships, including the forced separation of families, escalating deportations of individuals with deep roots in their communities, and indefinite detention in cruel and abusive conditions. Of an estimated 11 million undocumented Americans, we estimate that between 15,000 and 50,000 adults are transgender, along thousands of transgender undocumented youth. Transgender immigrants face even higher levels of job, housing, and health care discrimination, and far higher rates of violence.<sup>1</sup> Current immigration laws present often-insurmountable hurdles for trans immigrants, many of whom come to the US fleeing horrific violence and persecution in their home countries.

Current immigration enforcement policies, make our communities less secure by enlisting local law enforcement to enforce immigration laws and undermining community trust in law enforcement. Although transgender immigrants are at high risk of being victims of violent crime, they are frequently afraid to seek assistance from law enforcement. According to the NTDS, 46% of all transgender people, and 51% of Latino/Latina transgender people, state that they are uncomfortable seeking police assistance.<sup>2</sup> Turning local police into immigration agents encourages racial profiling and make extremely vulnerable populations even less likely to report crimes or be willing to testify in criminal cases.

Finally, immediate action is needed to dismantle and reform our massive, costly and inhumane system of prolonged immigration detention, in which transgender people are particularly vulnerable to abuse. The Department of Homeland Security (DHS) in 2009 promised substantial reforms, and NCTE has worked with many other human rights advocates to see reforms enacted, but little has changed. DHS still needlessly detains hundreds of thousands of people each year in jails and jail-like facilities, and lacks binding, comprehensive standards or meaningful accountability for those it contracts with to operate them. Transgender detainees are still subjected to abuse, prolonged isolation, and deprivation of medical care. The solution is to replace detention with more humane and cost-effective community supervision for those in immigration proceedings as we work to fully reform our broken immigration system.

### Policy Advances

- The President announced the Deferred Action for Parents of Americans (DAPA) program and expansion of the Deferred Action for Childhood Arrivals (DACA) program. (2014) The Department of Homeland Security (DHS) issued Prison Rape Elimination Act (PREA) rules which apply to immigration detention facilities, with some LGBT protections, albeit limited. (2014)
- DHS issued a directive calling for limits on solitary confinement used in immigration detention facilities. (2013)
- The President instituted the Deferred Action for Childhood Arrivals. (DACA) program (2012)

### Needed Policy Changes

- Congress should pass comprehensive immigration reform that includes: the DREAM Act, which provides youth who grew up in the U.S. and go to college or serve in the military with legal status and a path to citizenship; and the Refugee Protection Act, which would provide critical protections for refugees and their families and eliminate arbitrary filing deadlines for those seeking asylum.
- Congress should reduce appropriations for immigration detention, eliminate the detention bed quota that mandates a certain number of beds are filled each night in immigration detention facilities, and end mandatory detention requirements.
- Congress should eliminate overbroad grounds for inadmissibility and deportability, such as the 10-year bar for persons found to have engaged in commercial sex work.

<sup>34</sup> Jessica Jeanty & Harper Jean Tobin, Our Moment for Reform: Immigration and Transgender People. Washington, DC: National Center for Transgender Equality (2013).  
<sup>35</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 162.

- The President should take strong executive action to provide relief for as many undocumented Americans as possible from deportation and family separation and to sharply curb the use of immigration detention. Individuals must not be excluded from relief on the basis of survival crimes or non-violent misdemeanors.
- The Department of Homeland Security should adopt an unequivocal ban on prolonged segregation of transgender detainees, survivors of torture or sexual abuse, and others at risk of abuse.
- U.S. Customs and Border Patrol (CBP) should adopt clear policies and procedures to prevent excessive use of force and abuse of individuals detained by CBP, including providing for individuals to be searched, housed, and otherwise treated in accordance with their self-identified gender.
- The Department of Health and Human Services and its Office of Refugee Resettlement should issue strong regulations to implement the Prison Rape Elimination Act (PREA) in facilities housing unaccompanied immigrant children, including ensuring transgender youth are housed according to their gender identity.
- The Department of Homeland Security should immediately cease detaining LGBT immigrants in all but the most extraordinary cases based on their high rates of victimization in detention.

See *ID Documents and Privacy* for more on immigration documents.

See *Family and Relationship Recognition* for more on spousal immigration benefits.

See *The Right to Travel* for more on border crossings and airport security.

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CHAPTER 13:

## **REDUCING INCARCERATION AND ENDING ABUSE IN PRISONS**



## REDUCING INCARCERATION AND ENDING ABUSE IN PRISONS

More than 2 million Americans today are behind bars, with African-Americans are more than six times as likely to be incarcerated as whites, and Latinos are more than twice as likely to be incarcerated.<sup>1</sup> Transgender people also face stark disparities. Nearly one in six transgender people (16%) (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—mirroring the stark racial disparities in all incarceration.<sup>2</sup> These high rates of incarceration are driven by pervasive discrimination, disproportionate poverty, homelessness, participation in street economies, and bias and abuse by law enforcement officers.

Mandatory minimum sentencing requirements, federalization of crimes and the abolishment of parole for federal prisoners all play a role in the increased incarceration rates at both the state and federal levels. Those incarcerated under federal minimum sentencing guidelines are overwhelmingly racial minorities and the poor.<sup>3</sup> Poverty, homelessness, and race have the most significant impact on incarceration rates: almost half (49%) of the National Transgender Discrimination Survey's homeless respondents reported being incarcerated at some point, more than three times the rate of those who were not homeless; transgender people of color reported being incarcerated more often and for longer sentences.<sup>4</sup>

Trans people are also at high risk for abuse in prisons, jails, and juvenile detention.<sup>5</sup> The categorical denial of transition-related medical care is common, as is prolonged isolation of trans people, which has been shown to have devastating effects on mental health and has been declared by the courts to be a type of torture.<sup>6</sup> These abuses occur within the context of a broken, overcrowded, and increasingly privatized prison system. Addressing both the harmful policies that drive mass incarceration and the intolerable conditions of prisons, jails, and detention facilities are urgent issues for trans people and our communities.

### Policy Advances

- The Department of Justice (DOJ) filed a first-ever court brief arguing that blanket limits on medical care for transgender prisoners are unconstitutional. (2015)
- The DOJ and the US Sentencing Commission implemented reforms to reduce federal sentences for non-violent drug crimes. (2013-2014)
- The PREA Resource Center issued positive guidance for prisons and jails on screening and searching transgender prisoners. (2013-2014)
- The Federal Bureau of Prisons agreed to review its solitary confinement policy. (2013)
- The National Institute of Corrections released an LGBT policy guide for state and local jail and prison facilities and began offering online LGBT training. (2013)
- DOJ issued final Prison Rape Elimination Act (PREA) regulations that included some transgender-specific protections, such as the ability to shower privately if requested, and the right to have an individual assessment with regard to being housed in male or female facilities. (2012)

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<sup>1</sup> Pew Research Center, King's Dream Remains an Elusive Goal: Many Americans See Racial Disparities (2013), [http://www.pewsocialtrends.org/files/2013/08/final\\_full\\_report\\_racial\\_disparities.pdf](http://www.pewsocialtrends.org/files/2013/08/final_full_report_racial_disparities.pdf).

<sup>2</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 163.

<sup>3</sup> American Sociological Association, Race, Ethnicity, and the Criminal Justice System, available at, <http://www.asanet.org/images/press/docs/pdf/ASARaceCrime.pdf>.

<sup>4</sup> For more on these issues, see Catherine Hanssens, Aisha C. Moodie-Mills, Andrea J. Ritchie, Dean Spade, and Urvashi Vaid. 2014. "A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV." New York: Center for Gender & Sexuality Law at Columbia Law School.

<sup>5</sup> National Prison Rape Elimination Commission, Report, at 73 (2009); Valerie Jenness et al., Violence in California correctional facilities: An empirical examination of sexual assault. Irvine, CA:Center for Evidence-Based Corrections (2009).

<sup>6</sup> See, e.g., Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268 (United Nations, Aug. 5, 2011); Jeffrey L. Metzner and Jamie Fellner, Solitary Confinement and Mental Illness in US Prisons: A Challenge for Medical Ethics, *J. Am. Acad. Psychiatry and Law* 38:1:104-108 (March 2010).

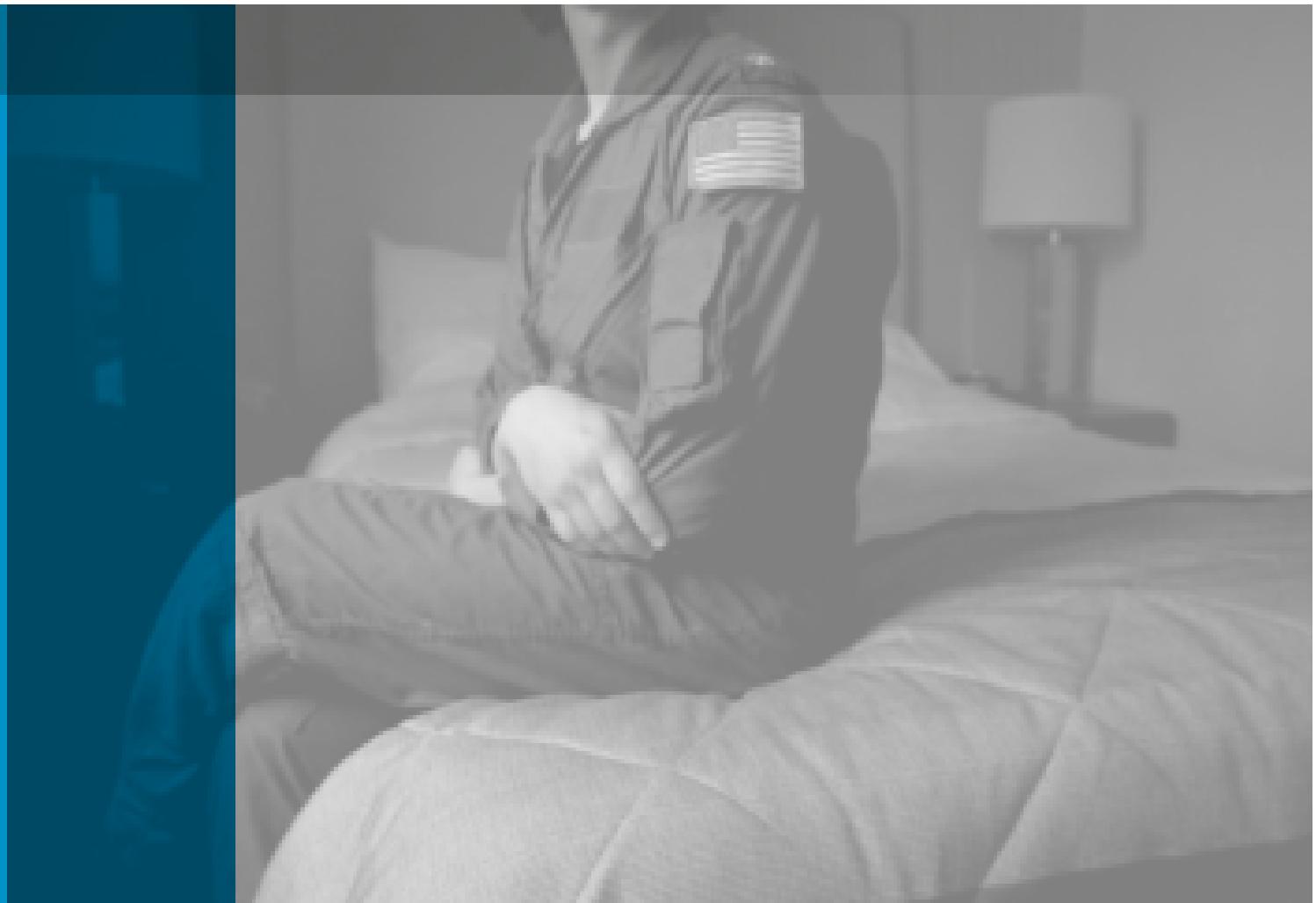
### **Needed Policy Changes**

- Congress should pass the Smarter Sentencing Act and the Justice Safety Valve Act, which would make federal sentencing laws smarter, less costly, and more humane.
- Congress should reform the Prison Litigation Reform Act to repeal or reform the requirements that a person have a physical injury and must exhaust all internal complaint processes at the prison before suing, and remove the law's application of the law to minors, all of which create excessive barriers to meritorious civil rights litigation.
- Congress should expand federal funding for drug treatment and community re-entry programs.
- Congress should consider reinstating parole for federal offenders and repealing unnecessary minor federal criminal statutes.
- The Department of Justice should take action to address state and local laws that effectively criminalize homelessness and poverty, such as loitering and vagrancy laws and bans on sitting or eating in public or panhandling. DOJ should issue guidance to states and municipalities on the constitutionality and cost-effectiveness of such laws, intervene in litigation challenging such laws, incorporate investigation of civil rights abuses of homeless people as a standard practice in federal pattern and practice investigations, and include provisions addressing discriminatory policing of homeless people in federal consent decrees.
- The Departments of Justice, Housing and Urban Development, and other agencies should leverage federal funding criteria to discourage laws and practices that effectively criminalize homelessness and poverty.
- The Department of Justice should vigorously enforce the Prison Rape Elimination Act (PREA) by ensuring strict compliance with audit, certification, accreditation, and penalty procedures, and by providing training and resources to state and local agencies.
- The Department of Justice should, by guidance or regulation, clarify that PREA standards apply to police cars and other temporary locations of police detention.
- The Federal Bureau of Prisons should adopt rules prohibiting the use of solitary confinement for periods of longer than 14 days, and for any period for minors, pregnant persons, and those with mental illness.
- The Federal Bureau of Prisons should comply with PREA by using a multidisciplinary committee, with input from outside experts, to place transgender prisoners in facilities consistent with their gender identity whenever appropriate, regardless of anatomy or birth sex, and should publicly report data on how transgender people are housed.
- The Federal Bureau of Prisons should establish a standardized process for transgender prisoners to make an election whether to be subject to physical searches by male or female officers.

See *Ending Anti-Trans Violence* for more on law enforcement, anti-trans violence, and sex work.

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**CHAPTER 14:**  
**OPEN MILITARY SERVICE**



## OPEN MILITARY SERVICE

Transgender people have served with distinction, but in silence, in every branch of our armed forces. According to the National Transgender Discrimination Survey, one in five transgender adults is a veteran.<sup>1</sup> But while the repeal of “Don’t Ask, Don’t Tell” in 2010 has allowed lesbian, gay, and bisexual troops to serve openly, an estimated 15,000 transgender service members are still forced to lie about who they are in order to serve their country.<sup>2</sup> The ban on open service for transgender people is not mandated by any law passed by Congress. The military maintains its own rules for who is eligible to serve, which can be changed without congressional action. The transgender ban is the result of archaic rules that treat transgender people as mentally and medically unfit—rules that are based on outdated, unfounded stereotypes. Gay, lesbian, and bisexual service members were also once deemed unfit. There is simply no basis in medical science or military need for excluding transgender people from serving openly. Just as there was no basis for believing that openly gay, lesbian, or bisexual service members were unfit to serve or harmful to good order, there is no basis for turning away or drumming out transgender people from the armed forces.

This policy ruins lives and careers, while squandering money and skills that our forces need to carry out their missions. Policies of this kind are rejected by a growing number of U.S. military allies, including Australia, Canada, the United Kingdom, and others. In 2014, Defense Secretary Chuck Hagel called for a review of this outdated policy, which would undoubtedly show that the current policy is harmful and necessary, and only simple administrative changes are needed to permit all qualified individuals to serve openly and honorably. Current Defense Secretary Ashton Carter has also indicated he is open to changing the policy, as has a spokesperson for President Obama. The Department of Defense has the power and the responsibility to end this policy.

### Policy Advances

- The Department of The Army issued a directive requiring discharges of military services members based on their transgender status be approved by the Assistant Secretary for Manpower and Reserve Affairs. (2015)

### Needed Policy Changes

- The Department of Defense should revise military medical regulations to permit transgender people to serve openly.
- The Department of Defense should eliminate outdated medical care regulations that bar medically necessary treatment for gender dysphoria.

*See Honoring Our Veterans for more on policies affecting military veterans, retirees, and dependents.*

<sup>1</sup>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 30.

<sup>2</sup>Gates, GJ and Herman, JL. 2014. Transgender Military Service in the United States. Williams Institute, UCLA School of Law.

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**CHAPTER 15:**  
**HONORING OUR VETERANS**



## HONORING OUR VETERANS

Despite a continuing ban on open military service by transgender people, many have made extraordinary personal sacrifices to serve their country. Estimates put the number of transgender veterans in the hundreds of thousands, and the National Transgender Discrimination Survey found that 20% of transgender adults are veterans compared to 10% of the US population.<sup>1</sup> Unfortunately, many of these veterans have been denied access to medical care and other services guaranteed through the Veterans Administration (VA) and have faced discrimination and harassment at VA facilities.

The VA has taken important steps to address these discriminatory practices and improve treatment of trans veterans, but there is still more to be done to ensure that transgender veterans receive equal access to benefits. In particular, the VA has so far maintained arbitrary and outdated regulations prohibiting coverage for transition-related surgeries.

### **Policy Advances**

- The Department of Defense began issuing updated military service records reflecting transgender veterans' current names. (2014)\*
- VA updated gender change record policy, strengthened directive. (2013)
- VA directive called for nondiscriminatory treatment for transgender vets. (2011)

### **Needed Policy Changes**

- The Department of Veterans Affairs (VA) should eliminate outdated regulations prohibiting coverage for medically necessary, transition-related surgeries for eligible veterans and dependents.
- The Department of Veterans Affairs should continue to develop and implement training and other resources on LGBT competence for VA staff, including clinicians.
- The Department of Defense (DoD) should adopt a uniform policy for updating gender in DoD personnel and benefit systems, comparable to existing policies for U.S. passports and federal civilian personnel records.
- The Department of Defense should adopt a uniform policy allowing transgender veterans and retirees to obtain documentation of military service that does not disclose a former name.

See *Open Military Service* for more on military service.

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**CHAPTER 16:**  
**FAMILY AND RELATIONSHIP RECOGNITION**



## FAMILY AND RELATIONSHIP RECOGNITION

The government should value and support all families. As of this writing, the Supreme Court is about to rule on the constitutionality of remaining bans on marriage or marriage recognition for same-sex couples. For many families, a positive ruling could extend federal Social Security, veterans' and other benefits that are currently based on state-of-residence marriage rules. Even with nationwide marriage equality, it remains important to recognize all families, including domestic partners of all genders who cannot or choose not to marry. And discriminatory practices still exclude many LGBT families from fostering, adoption, or recognition of parent-child relationships.

### **Policy Advances**

- The Department of Justice filed a Supreme Court brief arguing that state bans on same-sex marriages are unconstitutional. (2015)
- The Social Security Administration issued guidance on recognizing marriages involving a transgender spouse, instead of treating all such marriages as “suspect.” (2014)
- The Supreme Court overturned section 3 of the so-called Defense of Marriage Act (DOMA), allowing the federal government to honor state-recognized same-sex marriages; agencies move to implement the ruling. (2013-on-going)
- US Citizenship and Immigration Services issued guidance on recognizing marriages involving a transgender spouse for immigration purposes. (2012)
- The Department of Labor issued an interpretation recognizing in loco parentis relationships for workplace family leave. (2009)

### **Needed Policy Changes**

- Congress should pass the Every Child Deserves a Family Act, which would prohibit discrimination in adoption and foster care placements based on gender identity and sexual orientation.
- Congress should pass the Respect for Marriage Act to establish clear and equitable rules for federal benefits for all married couples.
- All federal agencies that administer benefit programs in which marriage is a factor should clarify through internal guidance that they will recognize a marriage that was recognized as a valid marriage where and when it was entered into, regardless of a spouse's prior or subsequent gender transition.
- Congress and federal agencies should extend the same rights to married couples and domestic partners alike in key areas such as health benefits and family leave.

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CHAPTER 17:

## ADVANCING GLOBAL HUMAN RIGHTS



## ADVANCING GLOBAL HUMAN RIGHTS

As a member of the Council for Global Equality, NCTE works with the Council to ensure that the United States uses its diplomatic, political, and economic influence to promote human rights and oppose human rights abuses that are too often directed at individuals because of their gender identity or sexual orientation. The US has played an important role in advancing the human rights of LGBT people in the United Nations as well as in bilateral and regional relations, and in 2015 established a Special Envoy for the Human Rights of LGBT Persons. However, much more can be done to deeply integrate human rights, including the rights of LGBT persons, into all aspects of US foreign policy.

### **Policy Advances**

- The State Department established a US Special Envoy for the Human Rights of LGBT Persons. (2015)
- The US joined a group of 25 nations in a historic joint statement of commitment to advance human rights and promote inclusive development for LGBT and intersex persons through increased cooperation. (2014)
- The US Agency for International Development announced the LGBT Vision for Action, outlining agency priorities and actions to date to support LGBT-inclusive international development work. (2014)
- The United Nations (UN) launched its global “Free and Equal” public education campaign for LGBT human rights. (2013)
- President Obama issued a memorandum directing all federal agencies to take action on LGBT human rights abroad. (2011)
- The United Nations High Commissioner for Human Rights issued a historic report finding a pattern of human rights violations against LGBT people. (2011)
- The State Department launched the Global Equality Fund to support LGBT human rights activists around the world. (2011)
- The State Department began including LGBT people in annual human rights country reports. (2010)

### **Needed Policy Changes**

- All federal agencies working abroad should continue to assertively implement the December 2011 Presidential Memorandum to promote and protect the human rights of LGBT people in U.S. diplomacy and foreign assistance work, including through law enforcement training programs and direct support for transgender and LGBT organizations.
- The Department of State should require automatic policy reviews whenever a foreign country enacts new anti-LGBT policies, such as the review undertaken following passage of Uganda’s repressive anti-gay law in 2013.
- The Department of State, US Agency of International Development, and other agencies should require government contractors and grantees globally adopt LGBT-inclusive nondiscrimination policies.\*
- The Department of State should engage in a vigorous and concerted effort to use people-to-people exchanges and speaker programs to advance understanding of transgender rights as human rights.
- The U.S. Trade Representative should ensure that the human rights safeguard clause in any prospective bilateral or regional trade accord includes specific reference to transgender populations.

- The Department of Commerce should introduce transgender equality into the dialogue and work programs of American Chambers of Commerce abroad.
- The Bureau of Population, Refugees and Migration should continue its work on enhancing protection of LGBT refugees and implement a transparent, meaningful system of expedited processing for the resettlement of refugees who face an imminent risk of danger in their countries of first asylum, in coordination with the Department of Homeland Security.
- The Office of Global Affairs should engage with the World Health Organization (WHO) to support appropriate revisions to the International Classification of Diseases (ICD) to de-pathologize gender variance and reflect current medical science regarding gender identity.
- The Office of Global Affairs should engage with the World Health Organization (WHO) to pass a resolution recognizing global LGBT health disparities and calling for action to address them.

*See Fighting HIV/AIDS for more on international HIV/AIDS policy.*

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