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Transgender Americans: A Handbook for Understanding



Transgender Americans: A Handbook for Understanding

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Executive Summary

We hope that readers of *Transgender Americans: A Handbook for Understanding* will find it a useful overview of the issues facing transgender Americans in our society. This handbook aims to help readers become familiar with the range of issues faced by transgender Americans, from the complex process of getting an appropriate birth certificate, to family and parenting issues, to discrimination and hate violence. These issues are not theoretical — they affect real people who are an integral part of our American community.

We start by providing a picture: who transgender people are, how many are simply working to make a life and a living in the United States every day, and what the American people already understand and believe about their transgender neighbors and co-workers. Next, we discuss the numerous issues in which transgender people face discrimination and harassment: in finding and keeping jobs, locating housing and using public accommodations, staying safe in their homes and communities, obtaining critical health care, securing legal documents consistent with their gender identity, having their relationships respected and protected, raising their children, safely attending school and being treated fairly and humanely in the criminal justice system.

For each issue discussed, we define the problem, talk about a few of the real people that this issue affects and describe the current state of law and policy on the issue. More advances have been made in some substantive areas of law and policy than in others. In every area, much more needs to be done to ensure transgender people fair treatment and a level playing field in the United States.

Finally, we highlight what the Human Rights Campaign and the Human Rights Campaign Foundation have been doing, and will continue to do, to advocate for full equality for transgender people.

Special Thanks

Unless otherwise indicated, the photos in this handbook were provided by Mariette Pathy Allen, from her award-winning book *The Gender Frontier* (Kehrer Verlag Heidelberg). We thank Pathy Allen for providing these powerful images for this publication.

A Message from HRC Foundation President Joe Solmonese

This may surprise you, but our own polling shows that most Americans understand what the term *transgender* means. They support fundamental fairness for transgender people, including protection from discrimination on the job. But the challenges that transgender people face remain vast and the protections are few.

Whether your child just came out to you as transgender, a fellow churchgoer is transitioning or a constituent is asking you to sponsor a non-discrimination bill, this handbook serves as a resource for better understanding.

I want to stress how important it is for all of us who believe in fairness to learn more about the challenges faced by transgender Americans — and to do something about it.

Please don't hesitate to contact our organization for more information. Several other organizations are also doing important work, including the National Center for Transgender Equality (www.nctequality.org) and the Transgender Law and Policy Institute (www.transgenderlaw.org), and we're honored to work with them side-by-side.

This handbook is only the beginning. With your support, the critical goal of achieving equality for all Americans — including transgender Americans — will become a reality.

Sincerely,



Joe Solmonese
President, Human Rights Campaign Foundation

P.S. Please pass the handbook on to friends, family and co-workers, so they can become even more aware, too.



Antonia

photo: Mariette Pathy Allen

Transgender Americans

When we talk about transgender Americans, who are we talking about? We are talking about regular people who are trying to make a secure living, send their kids to school and pay their bills — just like other Americans. For many transgender people, living in a manner consistent with their gender identity brings them an extraordinary sense of wholeness and well-being. Unfortunately, because they are transgender, they are often treated differently and denied the dignity and equality that every person deserves.

We use the term *transgender* to mean a broad range of people who experience and/or express their gender differently from what most people expect — either in terms of expressing a gender that does not match the sex listed on their original birth certificate, or physically changing their sex. It is an umbrella term that includes people who are transsexual, cross-dressers or otherwise gender non-conforming.

Transsexuals

A *transsexual* is a person who has changed, or is in the process of changing, his or her physical sex to conform to his or her internal sense of gender identity. The term can also be used to describe people who, without undergoing medical treatment, identify and live their lives full-time as a member of the gender opposite their birth sex. Transsexuals transitioning from male to female are often referred to as “MTFs.” Similarly, female-to-male transsexuals are frequently called “FTMs.”

Many transsexual people experience discomfort from the strong internal sense that their true gender identity does not match their physical sex. The medical term for this discomfort, which can be severe, is *gender dysphoria* or *gender identity disorder* (GID) and it remains listed as a mental disorder in the *Diagnostic and Statistical Manual of Mental Disorders*.¹

Often, people with gender dysphoria or GID have experienced this internal conflict since childhood. Many transsexual people suppress or deny this conflict for as long as they can until they literally feel they cannot continue to live in their birth sex and choose to undergo *gender transition*. This transition — possibly including hormone therapy, sex-reassignment surgery and/or other components — is generally conducted under medical supervision based on a set of standards developed by medical professionals.²

photo: Luis Gomez, used with permission from *The Washington Blade*

Cross-dressers

Cross-dressers wear the clothing and/or accoutrements, such as makeup and accessories, that are considered by society to correspond to the “opposite sex.” Cross-dressers can be either male-to-female or female-to-male.

Unlike transsexuals, they typically do not seek to change their physical characteristics permanently, or desire to live full-time as the opposite gender. (Cross-dressers are sometimes called *transvestites*, but that term is considered pejorative today.)

Gender Non-Conforming/Genderqueer

There are many people who are not transsexuals or cross-dressers, but who still express a non-standard gender identity or don’t conform to traditional gender norms. Often, these individuals identify as *gender non-conforming* or *genderqueer*.

There are gender non-conforming women who act “butch,” or in a stereotypically masculine manner, and men who act “femme,” or in a stereotypically feminine manner, but do not identify as the opposite gender and do not present themselves as such full-time. Not all transgender people fit neatly into one of these subcategories, because the range of expression of gender identity is so great.

A Note on Pronouns

A transgender person who presents herself as a woman should be called “she.” Likewise, a transgender person who presents himself as a man should be referred to with male pronouns. If you are not certain of someone’s gender, it is appropriate to respectfully ask his or her name and what pronoun he or she prefers that you use. In general, it is considered insensitive to refer to someone by the wrong pronouns once you have established which set of pronouns he or she prefers.



photo: Mariette Pathy Allen

How Many Transgender People Live in the United States?

Very little statistical data exists on the American transgender population. Most of the available figures are drawn from other countries.

Although the American Psychiatric Association has noted that “data from small countries in Europe with access to total population statistics and referrals suggest that roughly one per 30,000 adult males and one per 100,000 adult females seek sex reassignment surgery,”³ this statistic is not an accurate way of predicting the number of transgender people living in the United States. Studies like this one tend to dramatically undercount the population of transgender people because they only include transsexuals who have completed or are in the process of completing sex reassignment surgery.

Also problematic, according to one scholar who has investigated the prevalence of transsexualism in the United States, is that the aforementioned statistics date back to the 1960s, when far fewer people were aware of the possibility of treatment. Using contemporary data on the annual frequency of sex-reassignment surgery, Lynn Conway has estimated the prevalence of male-to-female transsexuals at as few as one in 500 and as many as one in 250 people born male.⁴

Only one thing is certain: little is known about how many transgender individuals live in the United States, but it is probably much higher than many have believed.

Americans’ Understanding of Transgender Issues

There has been dramatic increase in the visibility of transgender people and the understanding of transgender issues in the past several years. Focus groups and national polls show that Americans know who transgender people are, and believe that our nation’s laws should treat transgender people fairly.

In July 2002, HRC commissioned the first national poll on the attitudes of American voters toward transgender people and public policy issues.⁵ The poll showed a surprisingly high familiarity with transgender issues overall. Seven in 10 of the people surveyed said they were familiar with the term



Colleen

photo: Mariette Pathy Allen

transgender. After being read a brief definition of the word, nine out of 10 voters said they had heard of transgender people. A plurality of voters said they were neutral toward transgender people. However, as other polls have shown regarding gays, lesbians and bisexuals, respondents who know a transgender person are more likely to have positive feelings toward transgender people.

On public policy issues, an overwhelming majority of people felt that our nation's laws should protect transgender people. Sixty-one percent of those polled believed that we needed laws to protect transgender people from job discrimination, a number confirmed in a September 2004 poll, when 65 percent of respondents thought it should definitely be illegal to fire and refuse employment to someone just because they're transgender and 13 percent said it probably should be illegal.⁶ More than two-thirds believed that there should be a federal hate crimes law covering transgender people. Seventy-seven percent believed that transgender students should be allowed to attend public schools.

Employment Discrimination

Unemployment and under-employment are huge issues for transgender people — and particularly for transsexual people who often lose their jobs during or after their gender transitions. Transgender people who transition after working somewhere for an extended period of time often encounter blatant discrimination from people who do not understand or accept them. Later, when looking for a new job, they may run into the same trouble with potential new employers who find out that they've transitioned.

Within the transgender community, it is not uncommon to find people dramatically underemployed regardless of their experience or background. For example, a senior engineer or computer professional might be working at a low hourly wage or patching together a few part-time jobs (without such benefits as basic health insurance). It is not unusual to hear of a high-level consultant being asked, after transitioning genders, to consult only “behind the scenes from now on” rather than directly with clients.



Cas

photo: Mariette Pathy Allen

Access to restroom facilities in the workplace can also be a problem. Many workplaces have resolved this issue by simply working with their transgender employees to permit them to use the restroom that matches their outward gender presentations — for example, a transgender person who presents herself as a woman would use the women's restroom.

Similarly, the best workplace practice is for an employer to permit an employee to dress appropriately for the job in accordance with the employee's gender presentation, beginning when the employee begins his or her gender transitioning process.

Without protections from workplace discrimination, many transgender Americans will continue to be pressured to undergo the extreme psychological pressure of hiding their true gender identity if they want to keep their livelihood.

Thanks to the efforts of many individuals and organizations, including HRC, more and more employers have developed specific job protections for transgender employees. For example, in order to achieve a coveted perfect score on the HRC Foundation's Corporate Equality Index, which rates U.S. businesses on how they treat gay, lesbian, bisexual and transgender people, an employer must include transgender protections in its non-discrimination policy. However, transgender people continue to lose their jobs over issues unrelated to their job performance, and there is much work still to be done.

Polling shows that 65 percent of Americans think we need laws to protect transgender people from job discrimination.



photo: Mariette Patti Allen

Alex & Ciaron

Stories

Kristine Holt - Kristine Holt was fired from her job at a Pennsylvania social services agency after she began a medically supervised male-to-female transition. In denying her claim, the Commonwealth Court of Pennsylvania held that state law did not protect individuals who were discriminated against because of their transsexual status.⁷

Peter Oiler - Despite his 20-year record of outstanding service as a truck driver for the Winn-Dixie grocery store chain, Peter Oiler was fired after telling his boss that he sometimes engaged in cross-dressing when not on the job. Although Oiler had never cross-dressed at work, he was fired because his employer disapproved of him. In 2002, a federal district court ruled that federal employment discrimination law offered Oiler no protection because it did not outlaw discrimination against transgender people.⁸

Advances in Law and Policy

No federal law consistently protects transgender people from discrimination in the workplace. However, recently there have been some promising legal developments. Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex, has traditionally been interpreted not to protect transgender individuals. But, a recent decision by the U.S. Court of Appeals for the Sixth Circuit (covering Kentucky, Michigan, Ohio and Tennessee) marked a strong departure from that interpretation. In the 2004 case *Smith v. City of Salem*, the court found that a transsexual woman could file suit under Title VII.⁹ In that case, the plaintiff, a firefighter, was unfairly disciplined by her employers when she announced that she was beginning to transition from male to female.

The Sixth Circuit reaffirmed its conclusion in 2005 in *Barnes v. City of Cincinnati*, when it upheld a jury award to a transsexual policewoman discriminated against by the Cincinnati Police Department.¹⁰

In light of the lack of clear federal law on the issue, many state and local jurisdictions have created laws that prohibit discrimination against transgender people in employment, protecting more than 68 million people. Among them are California, Hawaii, Illinois, Maine, Minnesota, New Mexico and Rhode

Island, as well as the District of Columbia. Indiana, Kentucky and Pennsylvania also prohibit such discrimination in public employment through executive order. Courts, commissions and agencies have extended some employment protections for transgender people in a few other states.

Seventy-eight local jurisdictions, from Key West, Fla., to Scranton, Pa., to Tacoma, Wash., have also adopted employment protections. Among these jurisdictions are some of the largest cities in America, including Chicago, Dallas, Los Angeles and New York, as well as smaller places across the country like Peoria, Ill.; Louisville, Ky.; Ypsilanti, Mich.; and El Paso, Texas. For an up-to-date comprehensive list, see the Transgender Law and Policy Institute's website at www.transgenderlaw.org.

In addition, numerous corporations have added protections for transgender employees to their non-discrimination policies. In fact, 55 of the Fortune 500 companies have adopted policies that include their transgender employees — among them American Airlines, Capital One, ChevronTexaco, Ford Motor Company, IBM, J.P. Morgan Chase, Microsoft and Xerox. Transgender-inclusive policies have also been adopted by many colleges and universities, labor unions and several congressional offices. To see a full list of these employers, see HRC's website at www.hrc.org/worklife.

These changes in law and policy offer hope to transgender people who may face discrimination in the workplace. However, there are still many transgender people who live outside of these jurisdictions and who are not offered these protections.

Housing and Public Accommodations Discrimination

Discrimination in housing and places of public accommodation is also a large problem for transgender people. While a transgender person is in the process of transitioning he or she may be evicted, or forced to leave home because a family member does not understand or accept the process. Landlords may not want to rent to a transgender person. The results can lead to homelessness, and the additional problem of discrimination in sex-segregated homeless shelters.



photo: Mariëtte Patiny Allen

Access to public facilities can also be a problem — specifically in health care, since doctors' offices may be unwilling to treat transgender people or even to have them in the waiting room for fear they will make other patients uncomfortable. Other public places, such as stores, restaurants and bars, may ask a transgender person to leave so he or she doesn't upset the other customers, or due to fear of violence against them.

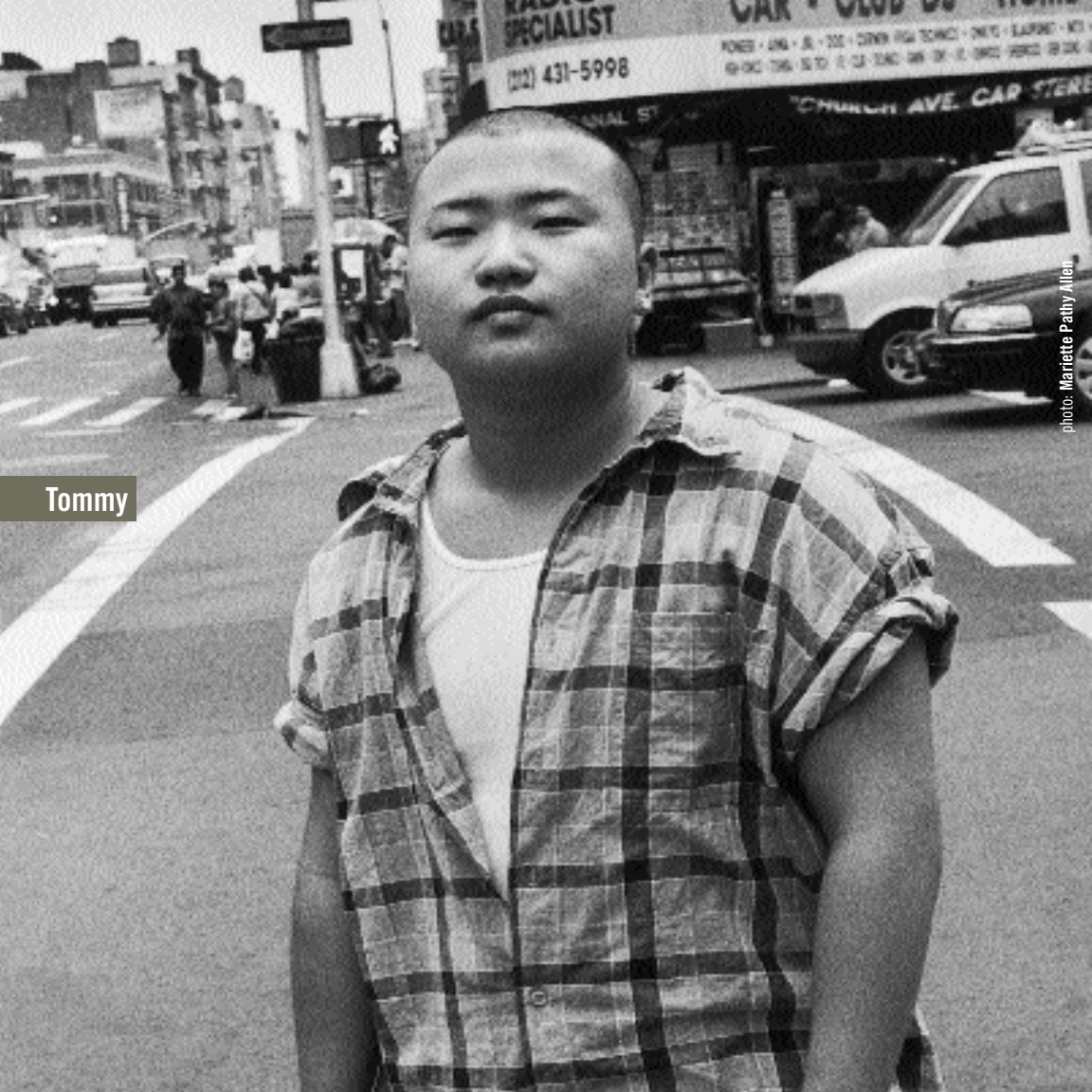
Stories

Hispanic AIDS Forum - In 2000 the Hispanic AIDS Forum, an HIV/AIDS services organization, was evicted from the Queens location that had been its home for 10 years. The landlord took action against HAF after his other tenants objected to the organization's transgender female clients using the women's restrooms in common areas of the building.

Despite HAF's efforts to negotiate with the landlord, the organization's lease was not renewed. Many Latino and Latina clients, transgender and non-transgender alike, were forced to go elsewhere for critical HIV and AIDS treatment. HAF filed suit against the landlord, who argued transgender people have no protection under New York's city or state laws.

In 2002, New York City amended its human rights law to explicitly protect transgender persons from discrimination. A New York appellate court, however, ruled in March 2005 that the landlord's actions designating restrooms based on "biological gender" were not illegal under the laws in place at the time of the eviction.¹¹

Toys 'R' Us - Tanya Jinks, Tara Lopez and Donna McGrath, three transgender women, went into a Brooklyn Toys 'R' Us on Dec. 13, 2000, to do some Christmas shopping. Instead of receiving assistance from the store's employees, the women were met with verbal harassment and physical threats. Brandishing baseball bats, two Toys 'R' Us staffers approached the women, uttering slurs such as "homos" and "faggots," and drove them from the store.



Tommy

When complaints to the store's management and Toys 'R' Us were not satisfactorily answered, Jinks, Lopez and McGrath filed suit under New York City's human rights ordinance. Even though it was not clear at that time that the law would protect transgender individuals, a jury found that the women had been discriminated against. Despite their conclusion the jurors awarded only \$1 in damages, plus attorney's fees.¹²

Advances in Law and Policy

Seventy-four state and local jurisdictions have transgender-inclusive anti-discrimination laws that cover access to housing. Seventy state and local jurisdictions protect transgender people from discrimination in the provision of and access to public accommodations.

Hate Violence

Hate violence against transgender people appears to be epidemic, with hardly a month going by without another story of a transgender person who was beaten up, raped or killed. Furthermore, there is no way to know for certain how many hate crimes are committed against transgender people because statistics are not collected on these incidents of violence. Crimes against transgender people are under-investigated and under-prosecuted by local, state and federal law enforcement officials. This seems to be particularly true for especially marginalized transgender people, such as those who are poor, young, immigrants or people of color.

Polling shows that 68 percent of Americans believe we need a federal hate crimes law protecting transgender people.



photo: Mariette Pathy Allen

Marla
& her
daughter,
Vivian

Stories

Brandon Teena - Brandon Teena moved to Falls City, Neb., in 1993, shortly after beginning to live as a man. Teena passed easily as a male until he was discovered to be biologically female by the sheriff's department, who then outed him to a local newspaper. On Christmas Day, 1993, Teena was beaten and raped by two male acquaintances.

Teena reported the rape, despite the fact that his attackers had threatened to kill him if he went to the authorities. The sheriff's department failed to provide protection and informed the rapists of the complaint against them. One week after they had attacked Teena, the two men murdered him and two of his friends. At trial, one of the murderers, who was sentenced to life in prison, testified against the other, who received three death sentences and currently awaits execution.

Teena's mother filed a civil suit against Richardson County for the sheriff's failure to protect him after reporting the rape. The case was appealed to the Nebraska Supreme Court, which found the sheriff's behavior was "extreme and outrageous, beyond all possible bounds of decency" and ordered \$80,000 in damages to Teena's mother.¹³

Amanda Milan - Amanda Milan, a transgender woman in her mid-20s, was hailing a cab outside New York's Port Authority Bus Terminal early one morning when two men began to hurl insults at her. "I know what that is between your legs," one said. "You're nothing but a man." As Milan walked away, one of the men handed a knife to the other, who slit her throat. According to some reports, nearby cabbies cheered as Amanda bled to death in the street.

The man who stabbed her pled guilty in exchange for a sentence of 17 and a half years in prison and five years supervised release. Notably, the New York City Police Department never classified Amanda Milan's murder as a hate crime because, in the department's view, it did not fit the necessary criteria.¹⁴



Robert

photo: Mariette Pathy Allen

Advances in Law and Policy

Seven states have hate crime laws that cover crimes motivated by bias against the victim based on their gender identity and/or expression: California, Connecticut, Hawaii, Minnesota, Missouri, Pennsylvania and Vermont. In addition, at least one local jurisdiction — Ithaca, N.Y. — protects transgender persons under its hate crime law. HRC and other groups continue to advocate for protections for transgender people under federal hate crime laws.

Health Care Issues and Discrimination

Regular medical care by an informed, sensitive physician is central to the lives of many transgender people, especially transitioning transsexuals.

Most transsexuals undergo hormone therapy and/or sex-reassignment surgery. Both procedures have potential complications and associated risks. It is thus imperative that they be supervised by a physician familiar with transgender care. Too often, transgender people, especially those with low incomes, obtain unprescribed hormones that may not have sufficient medical safeguards. Due to discrimination, both in health insurance and in access to basic care, it is difficult for many transgender people to get appropriate treatment.

The exclusion of transsexualism from health insurance policies is a serious problem that exists nationwide. Coverage is usually explicitly excluded for treatment related to transsexualism, even though the claim would be paid if the exact same treatment or procedure were utilized for some other medical reason. For example, testosterone therapy will be paid for by insurance policies if a non-transgender man has a low level of the hormone, but a transsexual man who uses the same hormone as part of his medically supervised gender transition would not be covered. As a result, transgender people must often pay out-of-pocket — for lifelong needs, such as hormone therapy, or for expensive one-time costs, such as sex-reassignment surgery — even when medical experts deem them necessary. Slowly, one company at a time, these discriminatory exclusions are being removed. For example, in early 2005 Aetna began the process of offering policies covering medically necessary treatments for gender transition.¹⁵



photo: Mariette Pathy Allen

Nancy

And like gay, lesbian and bisexual people, transgender individuals may face discrimination from medical professionals in the provision of basic health care. Doctors who are ignorant of or hostile to transgender people may fail to ask the right questions when seeing a patient about medical issues seemingly unrelated to any treatment of transsexualism. Some physicians are unwilling to see transgender patients at all, expressing a fear that their presence in the waiting room may disturb other patients.

Stories

Tyra Hunter - On Aug. 7, 1995, Tyra Hunter, a 24-year-old transgender woman, was involved in a car accident in Washington, D.C. When emergency medical technicians arrived, they began to treat the critically injured Hunter as she lay in the street. However, when one EMT discovered Hunter's male genitalia, he ceased aiding her. Horrified onlookers reportedly screamed at the paramedics to treat her, but the paramedics simply laughed as the injured Hunter tried to crawl away from them.

Additional medical personnel who subsequently arrived found Hunter and took her to the D.C. General Hospital, but her ordeal was far from over. Doctors first administered Narcan, a drug designed to counteract intoxication by narcotics, apparently on the stereotypical assumption that transgender women are drug addicts. Emergency personnel then failed to administer sufficient care between her early-morning arrival and her death a little over an hour later.

Three years later, a District of Columbia jury awarded Hunter's mother \$1.7 million in a wrongful death suit against the district, the EMT and the supervising emergency room doctor.¹⁶

Marc Mario - In 1992, Margo Mario began working for P&C Food Markets in western New York. A few years later, Mario announced his intention to undergo gender transition. P&C respected his decision to dress consistently with his gender identity and be referred to as Marc. He began hormone therapy and subsequently underwent sex-reassignment surgery.



photo: Marrette Pathy Allen

*However, when Mario sought reimbursement from his employee health insurance for these procedures, P&C informed him that it had concluded they were not “medically necessary” and would not be covered. Mario filed suit but the federal trial court, and subsequently the U.S. Court of Appeals for the Second Circuit, upheld the company’s decision.”*¹⁷

Advances in Law and Policy

Seventy jurisdictions in the United States, including six states, prohibit discrimination against transgender people in access to public accommodations, including public hospitals and other public health care facilities.

Identity Documents

Obtaining a legal change of sex and new identity documents are critical for many transsexual people. When people undergo a gender transition, they may need to get birth certificates, passports, drivers’ licenses and other identity documents that reflect that transition. Otherwise, they can encounter problems, invasive questions and even discrimination and violence when traveling, and any other time it is necessary to present identification. This is especially important in an era of heightened security concerns, as even minor inconsistencies between a transgender person’s appearance and his or her identity documents and travel information could unfairly label him or her as a security risk.

Perhaps the most important document that requires alteration after gender transition is an individual’s birth certificate. That document is often critical in obtaining subsequent government-issued IDs, such as driver’s licenses and passports. While most states allow the sex designation on a birth certificate to be changed, the difficulty of that process varies among jurisdictions. The granting of new drivers’ licenses with the new gender properly designated is treated similarly in most states.

Pauline



photo: Margo Mejia, used with permission from The Daily Illini

It is also important for federal identity documents, such as Social Security cards and passports, to reflect a transgender person's appropriate gender. Both the Social Security Administration and the United States Passport Service permit changes in gender designation, but they require proof of intended or completed sex-reassignment surgery.

Stories

Beck Fineman - "I am a 26-year-old transgender man living in Maryland. I changed my name through the courts and subsequently obtained a driver's license with the appropriate name and gender marker. The benefits were immediate. I was no longer anxious when asked to show identification at bars, movies or anywhere else. In order to have the security that the law viewed me properly as male, I also decided to change my birth certificate. Now, all that remains is my passport. I have put this off, because I know that I will need to show a copy of my amended birth certificate, which makes it so obvious that I have undergone gender transition. But, without a passport, I am unable to venture outside of the United States. There also remains that last remnant of my old identity, complete with dated photograph. Even having completed all of these processes and having notified Maryland, the federal government, all of my banks and credit card companies, the magazines that I subscribe to and so on, I still receive mail addressed to the 'old' Beck. I still live with the anxiety that someone in charge will call me out, call me a fraud or deny me my rights."

Pauline Park - "Like many transgender people, I carry personal identification documents that do not correspond to my gender presentation. All of my state-issued ID is in my male name with male sex designation, which creates a real challenge when I travel. As a Korean adoptee, I have the added problem that my adoptive family name is a European name, not an Asian name, so my legal name not only does not correspond to my gender presentation, it also does not meet expectations for someone with an Asian face. I'm often asked to present ID here in New York City, where most office buildings now demand it since 9/11. Ironically the only identification that I now have that matches my gender identity is an employee ID card, but this is not sufficient for travel purposes."

Jake & Maxwell



photo: Mariette Pathy Allen

Advances in Law and Policy

Twenty-three states have laws explicitly authorizing birth certificate amendments for people who have had sex reassignment surgery. Another 24 states generally allow changes to the “sex” designation on a birth certificate, either by statute or administrative process.

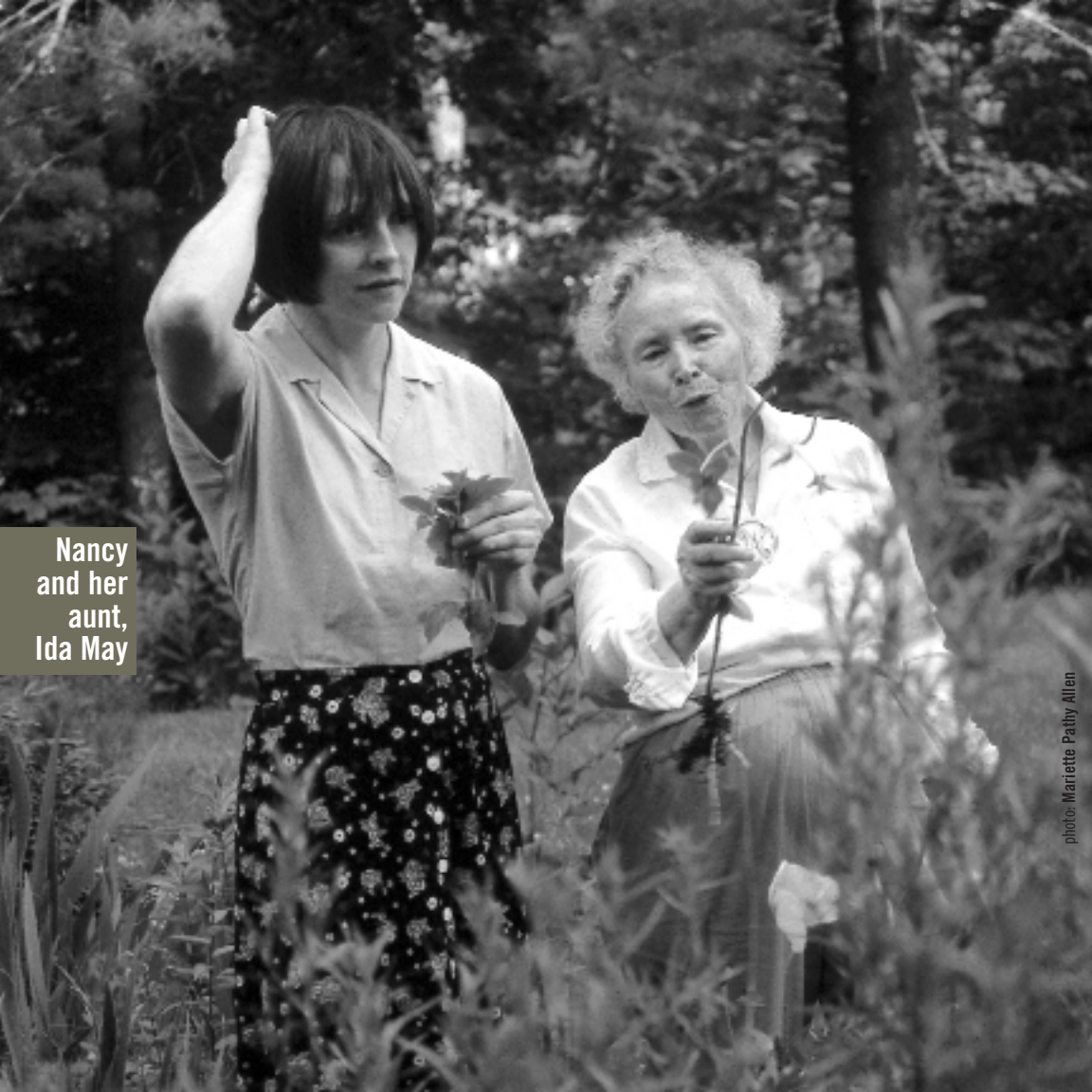
Three states — Idaho, Ohio and Tennessee — have refused to allow a person to change the sex designation on his or her birth certificate.

All states allow gender to be changed on a driver’s license, but the requirements for the change vary among jurisdictions and can range from a doctor’s letter to a court order. However, a recently adopted federal law aimed at national security concerns, the REAL ID Act, mandates the types of documentation required for an individual to obtain a driver’s license.¹⁸ The act may, as a result, make the process of changing the gender marker on a license more difficult.

Marriage

Many transsexual people have been married for years, without much incident or controversy. However, new challenges are emerging as the national controversy over marriage for same-sex couples grows.

In some cases, a marriage where one person has changed gender has been found to be a marriage between a same-sex couple and, therefore, impermissible under state law. Some transgender people have also been told by their employers or others, incorrectly, that at the moment their gender transitions are complete, their marriages become null and void. However, no law anywhere in the country has established that to be the case.



Nancy
and her
aunt,
Ida May

photo: Mariette Pathy Allen

Stories

Christie Lee Littleton - Christie Lee Littleton, a male-to-female transgender woman, and her husband were issued a marriage license by the commonwealth of Kentucky. After Littleton's husband died in 1996, she brought a medical malpractice lawsuit against his doctor. A Texas appeals court upheld the trial court's dismissal of the case and ruled that because Littleton was, in its opinion, a man, her marriage to her husband was not recognized in Texas, and she was therefore not entitled to any spousal benefits.¹⁹

J'Noel Gardiner - Marshall G. Gardiner, a businessman of "considerable wealth," was married to J'Noel, a male-to-female transgender woman whose birth certificate, driver's license, passport and health documents indicated that she was female. After Marshall died, his estranged son challenged J'Noel's claim to her share of her husband's \$2.5 million estate. The Supreme Court of Kansas held that, despite her extensive documentation, J'Noel did not "fit the definition of female," and therefore her marriage to Marshall was never valid in Kansas. Thus, the court concluded, she was not entitled to inherit as Marshall's wife.²⁰

Advances in Law and Policy

Marriage is a largely unsettled area of the law for transgender people. The legal status of a different-sex marriage in which one of the partners has transitioned genders has not been clearly determined in the vast majority of states. However, courts in Florida, Illinois, Kansas, Ohio and Texas have refused to recognize marriages involving transgender individuals because they considered them to be unlawful marriages between same-sex couples.



photo: Mariette Pathy Allen

Robert
with
grandson
and son

Parenting

Transgender parents face tremendous discrimination and bias, particularly in custody and visitation cases. In addition, transgender individuals and couples that include transgender partners may face hostility and even legal impediments when trying to adopt children.

Transgender parents currently face blatant biases and overwhelming ignorance in our courts comparable to that experienced by lesbian, gay and bisexual parents 30 years ago.

Stories

Sterling Simmons - *Sterling Simmons, a female-to-male transsexual, underwent hormone therapy and a hysterectomy and had his birth certificate changed to reflect his correct gender. Sterling married Jennifer in 1985, and Jennifer had a child through artificial insemination. The child had only known Sterling as his father.*

In 1998, the couple divorced and a custody battle ensued. In April 2003, a Cook County, Ill., judge ruled that Jennifer and Sterling had an invalid same-sex marriage, because Sterling was always a woman in the eyes of the law. Therefore, the court found, he had no standing to seek custody of the child, and Jennifer was granted full custody. This discriminatory decision was upheld by the Illinois Court of Appeals in February 2005.²¹ Sterling is now seeking an appeal before the Illinois Supreme Court.

Michael Kantaras - *Michael Kantaras, a female-to-male transsexual, underwent hormone therapy and surgical treatment and changed his name and birth certificate to indicate his gender. He moved to Florida and began dating Linda, who was then pregnant with her former boyfriend's child. Linda was aware of Michael's medical history, but accepted him as a man. The two were married and Michael adopted Linda's child in 1989.*

Antonia

photo: Mariette Pathy Allen

A few years later, Michael's brother provided sperm for artificial insemination, and Michael was listed as father on the second child's birth certificate. The marriage ended in 1998, and so began a difficult divorce and custody proceeding. Linda claimed that Michael was legally a woman and thus their marriage, and the subsequent adoption and legal presumption regarding the second child, were both invalid.

In 2002, the trial judge found Michael to be male under state law and the legal father of both of the couple's children. The judge further decided that Michael was the better suited parent to have primary custody. In July 2004, the Florida Court of Appeals invalidated the lower court's determination on the couple's marriage, sending the custody issue back to the trial court for review.²² In June 2005, Michael and Linda reached a settlement in which Michael retained his parental rights and shared custody of their children.²³

Advances in Law and Policy

Laws for transgender parents lag decades behind the advances for lesbians, gays and bisexuals. During the dissolution of a different-sex marriage, a transgender parent can face serious challenges to his or her custody and visitation rights. Judges may place restrictions on parental access or even go so far as to terminate a transgender person's parental rights. To see how your state's courts have treated transgender parents in custody and visitation cases, see the HRC Foundation's parenting laws database at www.hrc.org/family.

In addition, while there are no state statutory restrictions on the ability of transgender people to adopt, they may still face discrimination from adoption agencies. If a transgender individual is legally considered to be of the same sex as his or her partner, state laws barring gay and lesbian individuals or unmarried couples from adopting may be applied.

Schools

Various issues come up for transgender students in our nation's public schools, including the ability to attend school, to express themselves consistently with their gender identity, to be treated fairly in classes and to use the facilities that match their gender identity and gender presentation.

Problems also arise because transgender students are often accused of lying and are harassed by school officials when they present themselves consistently with their gender identity. There have even been situations in which school officials have failed to protect transgender students from the bias of other students, even when they know it to be a dangerous situation.

Polling shows that 77 percent of Americans believe that transgender students should be allowed to attend public schools.

Stories

Nikki Youngblood - In the spring of 2001, Nikki Youngblood went to a Tampa, Fla., portrait studio to have her senior picture taken for the Robinson High School yearbook. Youngblood, a lesbian, had long preferred jeans and t-shirts to dresses, and she and her mother agreed that a jacket and tie would be the proper outfit for her photo. However, her high school insisted that every girl photographed for the yearbook wear a scoop-necked, black velvet drape, an outfit that Youngblood felt was "just not me."

Because she refused to comply with the dress code, Youngblood did not appear in her senior yearbook. Undaunted, she filed a federal lawsuit against the Hillsborough County School Board. After three years in the court system the parties settled, with the school board agreeing to give students the opportunity to show "good cause" for an exemption from the senior photo dress code.²⁴

Alex McLendon - In 1998, 15-year-old Alex McLendon was "invited to withdraw" from the private Georgian Country Day School in Carrollton, Ga., for cross-dressing. McLendon began cross-dressing two years earlier and considered himself "95 percent girl." Some of McLendon's fellow students wore ribbons in their hair to show solidarity with him until they were threatened with expulsion.

McLendon refused to comply with administrator's demands that he "dress as a boy" and was forced to leave school. The school declined to cite the rule or regulation that McLendon had violated.²⁵

Advances in Law and Policy

Three states have laws prohibiting discrimination and harassment of transgender students in schools: California, Minnesota and New Jersey, plus the District of Columbia.

At least one state court has held that a student has the right to present as the gender reflective of his or her gender identity at school. In the 2001 case *Doe v. Yunits*, a Massachusetts Superior Court held that a junior high school could not prohibit a student from expressing her gender identity, even if the expression did not match the gender ascribed to the student at birth. The court noted that disciplining the student constituted sex discrimination and violated her First Amendment right to free expression.²⁶

Federal law has imposed liability on school systems that fail to protect lesbian, gay and bisexual students from harassment, and the logic of these cases may be extended to situations involving transgender students. In the 1996 case *Nabozny v. Podlesny*, the Seventh Circuit held that schools had to provide equal protection against harassment for all students.²⁷ The Ninth Circuit held school officials liable for failing to protect students from anti-gay harassment in the 2003 case *Flores v. Morgan Hill Unified School District*.²⁸ In addition, federal Department of Education guidance regarding Title IX of the Education Amendments of 1972 notes that the sexual harassment provisions of the law extend to students who are harassed in a non-sexual manner based on gender.²⁹

Correctional Facilities

Because housing and employment discrimination leave many transgender people with few income-generating options, some turn to sex work or other criminalized activities. Transgender people may also be the target of harassment and selective prosecution by law enforcement. As a result, the transgender community tends to be overrepresented in the criminal justice system.

The first problem transgender people face upon incarceration is the segregation of prison facilities by gender. It is left to individual prison officials to decide with which sex a transgender inmate should be housed. More often than not, this decision is based on birth sex. For example, a male-to-female transsexual who has undergone hormone therapy and sex-reassignment surgery may nonetheless be placed with an all-male prison population.

Such misassignment can lead to the serious problem of hate violence against transgender inmates. Prisoners who do not conform to the gender norms of the prison's population face the risk of verbal harassment, physical violence and sexual assault. Bias on the part of correctional officials can range from simply looking the other way to actively participating in attacks on transgender prisoners. While many facilities segregate transgender inmates to protect them from violence, the separation may not provide sufficient security — and it may also impose unfair isolation and restrictions on transgender prisoners under the guise of safety.

Another significant problem faced especially by transsexual prisoners involves access to medical treatment. While most courts have found that hormone therapy must be continued at pre-incarceration levels, few correctional facilities will readily allow a transgender inmate to begin such therapy after he or she is imprisoned. Furthermore, no prison system currently allows inmates to undergo sexual reassignment surgery, which is critical to some transsexuals in successfully transitioning genders. Prison officials who may wish to provide adequate care for transgender patients can also face hostility from legislators and the public.

Stories

Dee Farmer - Dee Farmer, a male-to-female transsexual, was sentenced to 20 years in federal prison for credit card fraud. Before incarceration, she had undergone hormone therapy and surgical alterations to her chest and genitals. Despite her gender presentation, federal prison officials assigned her to an all-male prison, although they had the foresight to place her in protective segregation. However, when she was transferred to a second federal prison, Farmer found herself in the general population. Within two weeks, she was brutally beaten and raped by another inmate in her cell.

Farmer filed suit against the prison for failing to prevent the attack. Her case was ultimately heard by the U.S. Supreme Court, which found that prison officials could be liable for disregarding a known risk of serious harm to an inmate. Unfortunately, loss of evidence over the lengthy course of her case resulted in an eventual dismissal, and Farmer never saw a resolution against the prison.³⁰

Kelly McAllister - Kelly McAllister, a pre-operative male-to-female transsexual, was arrested in connection with an alleged public disturbance. Despite her history of hormone treatments, clearly developed breasts and other feminine characteristics, the Sacramento, Calif., sheriff's department classified her as male and placed her in a cell with a male prisoner. At 5'7" and 135 pounds, McAllister was no match for her cellmate, who reportedly violently raped her.

Her jailers did nothing to aid her after the alleged attack. The sheriff's department claimed that gay and transgender prisoners were always separated for their protection. McAllister joined with four other transgender inmates in a suit against the sheriff's department alleging they were used as sex partners for other prisoners in exchange for good behavior.³¹

Advances in Law and Policy

Most courts have found that transgender inmates are not entitled to initiate hormone therapy or any other particular course of treatment while incarcerated. However, the U.S. Bureau of Prisons has adopted a policy that allows a transgender inmate utilizing hormone therapy to continue to do so, but only by proving that he or she was receiving medically supervised therapy at the time of incarceration.³² Because of the many health care hurdles facing transgender people, it is often difficult for an inmate to document that he or she had a regular (or any) health care provider who monitored the hormone therapy.

Courts have also found that unless a transgender prisoner who has undergone sex-reassignment surgery, he or she should be classified according to his or her birth sex for purposes of prison housing. A few jurisdictions, however, have begun to implement policies which assign housing to transgender people based on their gender identity.

What HRC and the HRC Foundation Are Doing to Help Secure Equality for Transgender People

- **Educating Members of Congress.** HRC's public policy advocates meet with hundreds of congressional offices every year and convey the need for full equality for our entire community. HRC, along with our fellow LGBT advocacy groups, strives to educate members of Congress and their staffs about the issues facing transgender Americans and the federal legislation that can help to address those issues.
- **Advocating for Inclusive Federal Legislation.** HRC has long been an advocate of federal employment non-discrimination and hate crimes legislation. Beginning in fall 2004, HRC has pledged to only support a workplace non-discrimination bill that explicitly protects the transgender community. HRC is also advocating for a federal hate crimes bill that explicitly addresses crimes based on gender identity bias.
- **Supporting Inclusive State and Local Legislative Efforts.** HRC's state legislative and grassroots staff helps state and local groups work for inclusive employment non-discrimination, hate crimes and other legislation before state and local legislative bodies. HRC also provides statewide groups with strategic and grassroots expertise as well as staff and financial support.
- **Supporting Litigation Efforts.** HRC and the HRC Foundation often sign on to amicus ("friend of the court") briefs in cases that have an impact on the LGBT community. For example, HRC joined on a brief in *RGIS Inventory Specialist v. Hawaii Civil Rights Commission*, asking the Hawaii Supreme Court to interpret the term "sex" in the state's anti-discrimination law to include transgender individuals.
- **Educating Corporate America.** Employers frequently consult with the HRC Foundation's Workplace Project about workplace non-discrimination policies and practices, including on how to fairly and respectfully treat their transgender employees. The HRC Foundation recently published *Transgender Issues in the Workplace: A Tool for Managers*, which gives employers information and guidelines in creating a fair work environment for transgender employees. The HRC Foundation also publishes the *Corporate Equality Index*, which is a measure of corporate support for the LGBT community. In order to receive a perfect score of 100 percent on the CEI, employers must have transgender-inclusive non-discrimination policies and practices.
- **Talking to the Gay, Lesbian and Bisexual Community.** Unfortunately, there remains a lack of understanding of the issues facing transgender people, even among other members of the LGBT community. HRC and the HRC Foundation work to educate gay, lesbian, bisexual and transgender people, as well as our straight allies, about transgender issues through publications, e-mail action alerts and updates, town hall meetings and many other means.

About the Authors

Brian Moulton is staff counsel with HRC. He provides legal advice on a variety of issues, including employment discrimination, health care and schools. Moulton also provides counsel on involvement in state and local electoral, lobbying and ballot measure efforts.

During law school, Moulton served as a legal intern to the State Legislative Lawyering and Transgender Civil Rights Projects at the National Gay and Lesbian Task Force, and as a McCleary Law Fellow at HRC. He was also a judicial intern to the Hon. Deborah A. Batts on the U.S. District Court for the Southern District of New York. Moulton is a graduate of The George Washington University Law School and the University of Texas at Austin.

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Supporting Partners:



National Center
Transgender Equality