Transgender People & the Law

FREQUENTLY ASKED QUESTIONS
Transgender People and the Law
Frequently Asked Questions

CONTENTS

Discrimination in Employment, Housing, Public Places and Schools 2

Name Change and Identity Documents 8

Family Matters 11

Health Care Coverage 13

Criminal Law and Transgender People 15

Transgender Rights in Prison 16

Transgender Immigrants 18

Notes on Words and Phrases Used 19
Are there laws that clearly prohibit discrimination against transgender people?

Yes. California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington and the District of Columbia all have such laws. Their protections vary. For example, Nevada’s law bans discrimination in employment, housing, and public accommodations; Maine’s law covers those categories plus credit and education. At least 150 cities and counties have passed their own laws prohibiting gender identity discrimination including Atlanta, Boise, Buffalo, Cincinnati, Dallas, El Paso, Indianapolis, Kansas City, Louisville, Nashville, New Orleans, and Pittsburgh. A list of localities with nondiscrimination laws that cover gender identity and/or expression is available at http://www.transgenderlaw.org/ndlaws/index.htm#jurisdictions.

The governors of Delaware, Indiana, Kansas, Kentucky, Maryland, Michigan, New York, and Pennsylvania have banned discrimination against transgender state workers through executive orders. Unless an executive order is expressly limited in duration or is rescinded, its protections usually stay in effect even after the person issuing the order leaves office. Some cities and counties have also passed protections for their transgender public employees. A list of localities that ban discrimination against their public employees on the basis of gender identity or expression is available at http://www.transgenderlaw.org/ndlaws/index.htm#public.

Do laws that prohibit sexual orientation discrimination protect transgender people?

In some cases, yes. If a law banning discrimination based on sexual orientation defines “sexual orientation” to include...
gender identity (as, for example, the ones in Colorado, Illinois, and Minnesota do), it protects transgender people as well as lesbian, gay, and bisexual people.

Also, most sexual orientation nondiscrimination laws prohibit discrimination based on perceived as well as actual sexual orientation. Therefore, in most places with laws against sexual orientation discrimination, if a person discriminates against a transgender person because of his or her belief that the victim is gay (even if that belief is wrong), the transgender person is protected.

Do laws that prohibit sex discrimination protect transgender people?

An increasing number of courts say yes. Although there are some older decisions saying that the federal law banning sex discrimination in employment (Title VII of the 1964 Civil Rights Act) does not prohibit gender identity discrimination, federal courts that have considered the issue more recently (e.g., the Courts of Appeals for the Sixth, Ninth, and Eleventh Circuits, covering Kentucky, Michigan, Ohio, Tennessee; Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington; Alabama, Florida and Georgia) have found some protections in the 1964 Civil Rights Act for transgender people. In addition, a federal district court in Washington, D.C. ruled that employment discrimination against an individual for transitioning from one gender to another is a form of discrimination “because of sex,” prohibited by federal law.

Transgender individuals anywhere in the country who feel they have experienced employment discrimination can file complaints with the U.S. Equal Employment Opportunity Commission (EEOC). In a 2012 decision, the EEOC found that “discrimination against a transgender individual because that person is transgender is . . . discrimination ‘based on . . . sex,’ and . . . violates Title VII.” The EEOC investigates the reports of discrimination it receives, and can arrange mediation, sue an employer, or give the person complaining permission to bring her own lawsuit.

Paralleling the federal trend, some state courts and administrative agencies (such as in California, Connecticut, Hawaii, Massachusetts, New Jersey, New York and Vermont)
have said that their state sex discrimination law covers discrimination against transgender people.

Do laws that bar disability discrimination protect transgender people?

Federal laws that prohibit disability discrimination specifically say no. Some state disability laws (e.g., Indiana, Iowa, Louisiana, Nebraska, Ohio, Oklahoma, Texas, Virginia) also exclude transgender people from coverage. California, on the other hand, amended its disability law in 2000 to include protections for transgender people.

Courts or administrative agencies in at least seven states—Florida, Illinois, Massachusetts, New Hampshire, New Jersey, New York and Washington—have ruled that some transgender people are protected under state disability laws. Virtually all these rulings involve transgender people with a diagnosis of Gender Identity Disorder.

Does the U.S. Constitution protect transgender people from discrimination?

Although the U.S. Supreme Court has never considered this question, we think the answer is yes. It is important to remember, however, that constitutional protections only cover discrimination or mistreatment by the government.

The U.S. Constitution’s guarantee of equality protects transgender people from being treated differently by the government because of fear or hostility. If, for example, a government supervisor imposes a stricter dress code on a male-to-female transgender worker than on other female workers for no reason other than his or her dislike of transgender people, that violates the constitutional right to equal treatment. However, constitutional equality protections for transgender people as an identifiable group are not yet nearly as robust as those for people of color and women.

Growing recognition by some federal courts that discrimination against transgender people is a form of sex discrimination offers transgender people in those jurisdictions the same level of protection under the Equal Protection Clause as that provided to women. For example, the Eleventh Circuit in 2011 decided in favor of a transgender woman who was terminated because she wanted to start transitioning at
work. The court found that “discrimination against a trans-
gender individual because of her gender-nonconformity is
sex discrimination, whether it’s described as being on the
basis of sex or gender.”

In our view, the First Amendment, which bars the govern-
ment from censoring speech or expression, also protects
our right to dress in a way that is consistent with our gender
identity. The way we dress is an important form of personal
expression. There is currently little case law regarding the
First Amendment right to express one’s gender.

Finally, individuals have important interests in the determi-
nation of their gender and the expression of their gender
through personal appearance and mannerisms, which are
interests that we believe the Due Process Clause recognizes
and protects. These constitutional arguments, however,
have not yet achieved widespread acceptance by courts.

State constitutions are also a source of protection against
discrimination by state and local government.

- **Are there laws that specifically protect transgender students from harassment or
discrimination?**

More and more, schools are protecting transgender students
from harassment or discrimination. California, Colorado,
Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jer-
sey, New York, North Carolina, Oregon, Vermont, Washing-
ton, and the District of Columbia have state laws specifically
protecting transgender students in public schools from ha-
rassment and/or discrimination. Some of these state laws
explicitly apply to education, while other states (including
Colorado, Illinois, Maine, New Jersey, Nevada, Vermont, and
Washington) classify public schools as public accommoda-
tions where gender identity discrimination is prohibited. In
Colorado, Illinois, Maine, Nevada, New Jersey, and the Dis-
trict of Columbia, gender identity discrimination laws also
cover some or all non-sectarian private schools. A number
of local school districts, from Decatur (GA) to Kalamazoo
(MI), have adopted similar protections through rules or poli-
cies. Several states also have more general laws banning
bullying and harassment of any sort but not specifically
mentioning gender identity.
Several of the states where gender identity discrimination is prohibited in public schools (including Connecticut, Colorado, and Massachusetts) have issued regulations or guidance clarifying what schools must do to accommodate transgender students, in areas like updating of educational records, access to appropriate restrooms, and bullying prevention. A number of school districts have also created rules or policies to address these issues.

The federal law prohibiting sex discrimination in educational programs receiving federal funds (Title IX of the Education Amendment Acts of 1972) bars sexual harassment of any student. Title IX also prohibits gender-based harassment, which includes harassment based on a student’s departure from sex stereotypes. Therefore, Title IX should protect transgender students from harassment and discrimination, but the courts are still grappling with the issue. Title IX applies to all public schools, and to many private schools that receive federal funding.

Are there laws that protect transgender students’ right to participate in high school and college sports?

Non-discrimination laws that cover gender identity should provide protection for student athletes who wish to participate in sex-segregated sports consistent with their gender identity.

In sex-segregated circumstances, school districts sometimes establish their own policies to determine which team a transgender athlete will compete on and which locker room he or she will use. A few states have adopted statewide policies or guidelines. Washington allows transgender student-athletes to participate in sports consistent with their gender identity irrespective of the gender listed on their student records, and Connecticut has published similar guidance. Colorado and Illinois both have more complicated statewide policies on determining a student’s eligibility for gender-specific school activities, including sports, by evaluating students’ school records, their medical history, and the advantages of their participation.

The National Collegiate Athletic Association, which organizes competition in 23 sports at over 1,000 colleges and
universities, allows transgender student-athletes to participate in sex-segregated sports consistent with their gender identity as long as they are receiving hormone therapy. Under NCAA rules, a transgender woman must take testosterone suppression medication for at least a year before competing on a female team.

#### Does the law protect a transgender person’s right to use the restroom consistent with his or her gender identity?

There’s no clear answer because very few courts have considered this question. The Minnesota Supreme Court has ruled that even a law prohibiting gender identity discrimination does not necessarily protect an individual’s desire to use a gender identity-appropriate restroom at work. The Tenth Circuit in 2007 upheld the Utah Transit Authority’s decision to fire a transgender bus driver, based on a claim that her employer risked liability for her use of public restrooms along her bus route. In a non-workplace context, a New York appeals court has ruled that it is not sex discrimination for a building owner to prevent transgender people from using gender identity-appropriate restrooms in a building housing several businesses.

Some jurisdictions (e.g., Colorado, Iowa, San Francisco, New York City, and the District of Columbia), however, have indicated that denying transgender people the right to use a gender identity-appropriate restroom violates nondiscrimination laws. In addition, Washington’s Human Rights Commission states that “transgender employees should be permitted to use the restroom that is consistent with the individual’s gender identity.” Some jurisdictions (e.g., Iowa, San Francisco, and D.C.) make clear that transgender people cannot be required to prove their gender to gain access to a public bathroom, unless everyone has to show ID to use that bathroom. Other jurisdictions (e.g., Chicago) continue to allow businesses to determine whether a transgender patron is given access to the male or female bathroom based on the gender on his or her ID.

Many businesses, universities and other public places are installing single-stall, unisex restrooms, which alleviate many of the difficulties that transgender people experience when seeking safe restroom access. While this is often a
useful step towards addressing the needs of transgender people and others, we believe that transgender individuals should have the right to use restrooms corresponding to their gender identity rather than being restricted to only using gender-neutral ones.

**Name Change and Identity Documents**

- **Can a person change his or her name to reflect his or her gender identity?**

  Yes. In some states, through what is called “common law name change,” people may change their name simply by using the new name in everyday interactions. It is free and easy, but does not create the kind of solid paper trail needed to change identity documents.

  The other way to change one’s name is to file a petition in court. Most judges will grant a name change so long as they are convinced that the petitioner is not trying to evade debts or the police.

  In rare cases, judges have required a transgender petitioner to prove that he or she has undergone medical procedures that show an intention to live permanently in the gender associated with the name desired.

- **Can a person get the name and gender marker changed on his or her birth certificate?**

  A court-ordered name change is usually necessary to change the name on one’s birth certificate.

  In most states, changing the gender marker on one’s birth certificate requires proof of surgical treatment to change one’s sex as well as, in many cases, a court-ordered name change. What the law means by “surgical treatment” is often unclear. A growing number of states (currently California, Washington and Vermont) allow an individual to change the gender marker on his or her birth certificate by showing proof of appropriate clinical treatment (not necessarily surgery).
Some states (e.g., Alabama) will only issue an amended birth certificate showing the name and gender marker changes. Other states (e.g., Idaho, Ohio and Tennessee) simply will not allow gender markers to be changed on birth certificates. For state-by-state instructions on how to change birth certificates, go to www.drbecky.com/birthcert.html.

Does changing the gender marker on the birth certificate legally change one’s sex?

Although changing the gender marker on one’s birth certificate should put to rest once and for all the question of one’s legal gender, there have been cases, usually involving marriages, where courts have ignored the corrected birth certificate. Specifically, courts in Kansas and Texas considered only the birth-assigned sex when ruling on a person’s sex for the purpose of deciding on the validity of his or her marriage. Courts ignored the fact that the transgender individuals in these cases had corrected birth certificates from other (i.e. their home) states. Similarly, in an Illinois case, a court looked past a transgender man’s reissued birth certificate, which had a male gender marker, and determined that he was a female because there were other surgeries he had not undergone that would in the court’s view “complete” his transition.

In contrast, a court in New Jersey recognized a transgender woman’s gender identity, which was also reflected on her birth certificate, when determining the validity of her marriage. Additionally, the Board of Immigration Appeals approved a visa based on marriage to a man for a transgender woman whose North Carolina birth certificate had a female gender marker.

Some individuals obtain a court order declaring a legal change of gender for added protection. (To save time and money, some advocates recommend doing this at the time of petitioning for a court-ordered name change.) The good thing about a court order is that, unlike a birth certificate or other identity document, courts and agencies in other states are supposed to follow it. There is still no guarantee, however, that such a court order will force a court to consider one’s sex legally changed when deciding the validity of a marriage.
Can a person change his or her name and gender marker with the Social Security Administration?

Yes. To change his or her name with the Social Security Administration (SSA) and obtain a new Social Security card, a person needs to submit a court order reflecting the name change. SSA officially requires a surgeon’s letter in order to change a person’s gender marker in its records. However, a letter from a physician documenting that one has “completed all the recommended medical treatment” for “altering one’s body and appearance” or “a gender transition” is frequently enough.

Is it advisable to change one’s name and gender with the Social Security Administration?

Yes. Ensuring that the SSA record of one’s gender is consistent with the gender marker on other identity documents could help avoid problems if, for example, someone checks for a match between a person’s SSA records and other identification.

Many of the state agencies that issue driver’s licenses will only do so if the name used on a driver’s license application matches the person’s SSA record. In addition, the threat of a federal ID card system increases the likelihood that in the future, one’s SSA gender marker may be considered the last word on one’s gender.

Can a person change the name and gender on his/her passport?

Yes. A copy of the court order confirming the name change is required to change the name on one’s passport. To change the gender on a passport, or to obtain a first passport with the correct gender marker, a transgender applicant must submit a letter from his or her physician certifying that he or she has undergone “appropriate clinical treatment” for transition to the new gender. (This “appropriate clinical treatment” does not have to include surgery.) So long as the letter states that the applicant has had appropriate clinical treatment for transition, it can be used to obtain a new, full validity ten-year passport. There is also a two-year passport.
available for applicants who present a letter stating that their clinical transition is “in process,” but it is unclear why anyone would choose that option since any transgender person who has begun treatment should be able to qualify for a ten-year passport. Along with the physician letter, the applicant must submit the other parts of a standard passport application, including photographs accurately reflecting his or her current appearance. Detailed instructions for updating the name and gender on a passport are available from the U.S. Department of State (http://travel.state.gov/passport/get/first/first_5100.html).

### Family Matters

- **If one spouse in a marriage transitions, is the couple still legally married?**

  Yes. A marriage is valid unless and until one or both spouses get a divorce or annulment.

  Even without a divorce or annulment, legal problems can arise from a spouse’s transition. For example, employers have been known to refuse health benefits to a spouse who is now of the same sex as the employee. Likewise, when one spouse dies, the surviving spouse may have problems collecting inheritance or tax benefits restricted to married couples. There’s very little law at this point on these issues.

- **Is the marriage of a post-transition transsexual to a person of a different sex legal?**

  It depends on where you live. Courts in Florida, Kansas, New York, Ohio and Texas have said no, explaining that what counts in those states is either the chromosomal or the birth-assigned sex. Other states that ban same-sex marriage may require that in order for a marriage to be legal, the transgender spouse must prove “complete” transition, as an Illinois court required in a 2005 decision where it invalidated a transgender man’s marriage to a woman because he had not undergone all available surgeries to transition. Courts in California and New Jersey have taken a more expansive view, ruling that the post-transition sex of the transgender
spouse determines whether the marriage is valid. In states where same-sex couples can get married, this question does not arise.

Because the law on recognizing marriages with transgender partners is still developing, transgender people should take extra steps to protect themselves, their partners and their children by entering agreements that protect their parental and some of their spousal rights should the validity of their marriage ever be challenged. The right to intestate inheritance (which allows one’s spouse to inherit property without a will) as well as the right to receive public benefits might not be recognized because of state laws with non-inclusive definitions of sex, gender and marriage.

We recommend crafting a written relationship agreement that sets out each spouse’s rights and responsibilities with respect to property, finances, health, and children. Furthermore, both spouses should have a last will and testament and assign one another durable powers of attorney for financial and medical decisions. Transgender parents with no biological or adoptive tie to their children should not rely solely on the parental presumptions applicable to children born into a marriage, but should instead adopt the children through a second-parent adoption [http://www.aclu.org/blog/tag/second-parent-adoption] to better protect their parental rights.

Are immigration benefits for marriage available to a married couple where one spouse is a transgender individual?

A marriage where one of the spouses is transgender will be recognized by the U.S. Citizenship and Immigration Services for immigration purposes if the marriage is recognized as a heterosexual marriage in the state in which it was conducted or if there are no laws in that state that ban marriage between a transgender person and a person of another sex.

Does transitioning after having children affect parental rights?

Sometimes. Some parents who transition are able to maintain a close relationship with their children, including some who divorce but are able to work out an amicable custody
arrangement with their ex-spouse. But other people who transition after having children may see their gender transition used against them by an ex-spouse in contested child custody proceedings. There is little custody case law concerning transgender parents and what exists is mixed. In some cases, transgender parents have fared well, with courts appropriately rejecting the asserted unsuitability of transgender parents and evaluating the standard best interest factors, e.g., the nature of the child’s relationship with each parent and each parent’s ability to provide for the child’s physical, emotional and educational needs. In other cases, parents have been denied custody or reasonable visitation solely based on the court’s conclusion that being in the care of a transgender parent would be harmful to the child. In some of these cases, the courts improperly based their decisions on speculation of harm, rather than evidence. In others, the transgender parent did not (perhaps for financial reasons) present testimony from expert witnesses such as psychologists, and the courts relied on the other side’s experts’ negative characterization of transgender parents. It is therefore important to have counsel refute the negative assertions that may be made about transgender parents.

Health Care Coverage

Do any government health care programs cover transition-related surgery or other transition-related medical treatment?

Generally speaking, it is difficult to get Medicaid coverage for transition-related treatment. No state explicitly permits it, and many states explicitly deny it. In those that do not explicitly permit or deny it, coverage may still be denied based on claims that transition-related treatment is “experimental” or “cosmetic.” In California, however, transgender people have been successful in securing Medicaid coverage for the costs of transition-related care.

Medicare explicitly excludes coverage for transition-related surgery. However, when prescribed by a physician, Medicare covers medically necessary hormone therapy. While the managed health care program for active duty and retired armed forces members does not cover gender confirming
surgeries, it does cover all other medically necessary treatment for transgender veterans, including hormones and mental health services.

**Does private health insurance cover transition-related surgery or other transition-related medical treatment?**

This depends on what the employer’s or insured individual’s contract with the health insurance company says. Today, the majority of insurance contracts either expressly exclude transition-related services or are unclear about whether such services are covered. Some transgender people have successfully forced insurance companies to pay for transition-related surgery or other treatments when the contract did not clearly exclude this coverage. In California and Oregon, state insurance agencies have interpreted state laws against gender identity discrimination to mean that insurance policies issued in those states must cover transition-related treatments if they cover the same treatment for other medical conditions.

Increasingly, employers are offering health insurance plans that cover transition-related medical treatment. At least 206 of the largest U.S. employers are now offering a health insurance plan that covers transition-related medical treatment. The cities of New York, Minneapolis, Portland (Oregon), Seattle, and San Francisco all provide coverage for transition-related care through their employee health plans. Additionally, several public universities (including the University of California system, the University of Massachusetts at Amherst, the University of Michigan, the University of Oregon, Portland State University and the University of Washington) now provide coverage of transition-related medical treatment for students, as do several private universities. Some employers and universities have set up programs to pay for transition-related health care separately (outside the health insurance plan that covers other forms of health care), although this approach may pose privacy risks.

Currently, we are working to ensure that health insurance obtained through federal and state exchanges under the Affordable Care Act will cover all medically necessary treatment for transgender people.
What does the law say about insurance companies denying coverage for routine medical treatments because one has undergone procedures for purposes of gender transition?

Not much yet. The problem arises because insurance companies usually ask individuals to disclose their gender and then restrict coverage to treatment that “corresponds” to that gender. If the individual does not indicate his or her gender, the insurance company often assigns one based on the kind of care the individual generally receives. This obviously causes problems for transgender individuals who need some treatment corresponding to their pre-transition gender and other care corresponding to their post-transition gender (e.g., gynecological care for female-to-male individuals who still have some female reproductive organs).

There is very little law on this issue, but the first court decision on it was good. In 2000, a Massachusetts court ruled that a woman could not be denied breast reconstruction surgery that was medically necessary for reasons unrelated to her gender transition simply because she is transsexual. In a more sweeping development, California passed a law in 2005 prohibiting health, disability, and life insurance companies from discriminating on the basis of gender identity.

Criminal Law and Transgender People

Are there laws that prohibit hate or bias crimes against transgender people?

Yes. A federal law protecting transgender people from hate crimes passed Congress in 2009, and was signed into law by President Obama. Furthermore, some states have transgender-inclusive hate crime laws. California, Colorado, Connecticut, the District of Columbia, Hawaii, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington explicitly protect transgender people in their hate crime laws. Transgender individuals also might find protection in states such as Arizona, Illinois, Iowa, Kansas, Louisiana, New York, Nevada, New Hampshire, Tennessee, and Wisconsin, where

- Is cross-dressing against the law?

In general, no. Bans on cross-dressing have been successfully challenged and many cities have taken steps in recent years to remove even unenforced laws banning cross-dressing from their books. However, a few localities (e.g. Benson, Minnesota; Haddon Township, Hillsborough Township, Montvale, Paulsboro, Pilesgrove Township, Ridgefield, South River, Woodbury and Woodcliff Lake, New Jersey; Meadville, Pennsylvania) still have such laws in place. Anyone ticketed or arrested under a cross-dressing law should think about fighting back in court, because there’s a good chance that the law will be ruled unconstitutional.

- Can a transgender individual run into legal trouble for using a restroom that is consistent with his or her gender identity?

When strong anti-discrimination protections are not in place, transgender people can be subject to criminal penalties for using a restroom that is consistent with their gender identity. In Dallas, for example, a transgender woman was ticketed for disorderly conduct in 2012 for using the women’s bathroom in a hospital. In contrast, a discrimination complaint filed by a transgender woman who was arrested in New York City’s Grand Central Station for using the women’s restroom ultimately resulted in a 2006 settlement securing a more inclusive policy on restroom use in New York’s Metropolitan Transit Authority system.

Transgender Rights in Prison

- Are prison officials required to place a transgender inmate in the facility that matches the inmate’s gender identity?

When considering this question, most courts have supported the decision of prison officials about where a prisoner...
should be housed. Most prisons still categorically house transgender women (particularly those who have not undergone genital surgery) in male facilities, and transgender men in female facilities. Nevertheless, a growing number of prison systems are developing more respectful housing policies, in part because they fear being held liable in court if they fail to protect transgender inmates from rape and other forms of abuse.

In June 2012, the federal Department of Justice enacted regulations pursuant to the Prison Rape Elimination Act that require determination of appropriate housing for transgender inmates on a case-by-case basis, taking into account factors like personal preference and safety needs, not solely based on their genitals. These regulations also limit the use of “protective custody” (which has sometimes resulted in severe isolation and torture-like experiences for transgender inmates), ban the use of segregated and potentially stigmatizing LGBTI units, require training for staff on communication with and treatment of transgender inmates, require improved avenues for reporting abuse and ban genital searches of transgender inmates just to determine their gender. As of June 2013, these regulations will apply to all correctional facilities that receive federal funding, including most state prisons and local jails.

Do transgender prisoners have a right to get hormone therapy?

Since 2011, in federal prisons, federal halfway houses, and prisons that contract with the U.S. Bureau of Prisons, transgender inmates have had the right to receive an evaluation and, where applicable, a treatment plan for Gender Identity Disorder, consistent with the current standards of care. Unlike past practices, even inmates who had not been diagnosed with GID prior to incarceration are entitled to an evaluation and possible hormone therapy.

In state prisons, transgender prisoners have frequently been denied any transition-related health care. Using the argument that the Eighth Amendment to the Constitution prohibits cruel and unusual punishment, including deliberate indifference to a prisoner’s medical needs, some prisoners have been able to persuade judges to order prison officials to provide hormone therapy and/or surgery. In 2011,
the Seventh Circuit affirmed a ruling striking down as un-constitutional a Wisconsin state law that banned hormone therapy and gender confirming surgery for transgender in-mates. By and large, however, courts are reluctant to order prisons to provide particular forms of medical care, especially those that prison medical officials think are not “medically necessary.”

Transgender Immigrants

May a transgender immigrant be granted asylum in the United States because of anti-transgender harassment in his or her country of origin?

Yes. More and more transgender immigrants are being granted asylum after making the case that they’ve been persecuted at home because of their failure to conform to cultural expectations regarding gender roles and/or sexual orientation. While many of the courts addressing the issue confuse sexual orientation with gender identity, it is clear that transgender people are a “particular social group” entitled to the protection of asylum laws.

A transgender person, however, must do more than show that he or she is transgender and was persecuted because of it in order to get asylum. The individual must also prove either that the government persecuted him or her or refused to do anything to stop the abuse.
When talking about transgender people, we sometimes use words relatively unfamiliar to nontransgender people. To make sure there’s no confusion, here’s what we mean by these terms:

**GENDER IDENTITY**
Gender identity is a person’s internal sense of being a man or a woman.

**GENDER EXPRESSION**
The way a person reveals his or her gender identity is gender expression. A person’s clothing, mannerisms, voice, etc., can all be a part of the person’s gender expression.

**TRANSGENDER**
Transgender is frequently used to describe a broad range of identities and experiences that fall outside of the traditional understanding of gender. Therefore, in addition to those people who wish to transition from one gender to another or have done so (who are often described by the clinical term “transsexual”), transgender often is meant to encompass a larger community that includes, for example, crossdressers and intersex individuals. Some transgender people prefer to describe themselves as genderqueer, gender variant or gender nonconforming.

Not everyone who does not conform to gender stereotypes, however, identifies as transgender. In particular, there are many people who do not conform to gender stereotypes but also do not experience conflict between their gender identity and the gender assigned to them at birth.

**TRANSSEXUAL**
Transsexual is the clinical term used to describe people who experience a conflict between their physical sex and their gender identity. For example, a person born with a female body but with primarily a male gender identity is a transsexual male. Because the term has clinical roots, it is widely used to describe the subset of people who wish to alter, are altering, or have changed their bodies hormonally.
and/or surgically to match their gender identity. We have used transsexual in this way, while recognizing that there is no one course of medical treatment that is necessary for a transsexual individual.

(GENDER) TRANSITION
Transition or gender transition describes what is for some a long and complex process of altering a person’s birth-assigned sex to match his or her gender identity. Gender transition can include hormone therapy, presenting full-time in the gender corresponding to one’s gender identity, and, in some but not all cases, surgical interventions.

GENDER IDENTITY DISORDER/GENDER DYSPHORIA
Gender Identity Disorder has been the medical diagnosis for individuals who experience a disconnect between their birth-assigned sex and their gender identity since 1994. However, the American Psychiatric Association is planning to replace the term “Gender Identity Disorder” with “Gender Dysphoria” in the upcoming 5th edition of its Diagnostic and Statistical Manual, in part because labeling dissonance between one’s gender identity and one’s body a “disorder” stigmatizes transgender people.

SEX REASSIGNMENT SURGERY
This phrase is commonly used to describe certain forms of transition-related surgical procedures, and usually refers to genital reconstruction surgery. Notwithstanding its regular use, this terminology is faulty on numerous levels. First, it fails to reflect the fact that transition-related surgery is simply a necessary step for many transgender people to affirm (rather than reassign) their sex/gender. As a result, the preferred term for such procedures is gender confirmation and/or gender affirmation surgery. Second, many people and courts assume that “sex reassignment surgery” means only genital surgery, whereas there are in fact a number of surgical procedures that can be part of an individual’s gender transition, including genital reconstruction surgery, breast augmentation or reduction, removal of the uterus and ovaries (for transgender men) or the testes (for transgender women) and facial surgery. Finally, some transgender people do not want or need to have surgery as part of their transition process.
CONTACT US:

American Civil Liberties Union
Lesbian Gay Bisexual Transgender & AIDS Project
125 Broad Street, 18th Floor
New York, NY 10004
212.549.2627
lgbthiv@aclu.org
aclu.org/lgbt-rights