

KNOW YOUR RIGHTS



Transgender People and the Law

FREQUENTLY ASKED QUESTIONS





American Civil Liberties Union

Lesbian Gay Bisexual Transgender & HIV Project

125 Broad Street, 18th Floor

New York, NY 10004

212.549.2627

lgbthiv@aclu.org

aclu.org/lgbt

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TRANSGENDER PEOPLE AND THE LAW

FREQUENTLY ASKED QUESTIONS

Discrimination in Employment, Housing, Public Places, and Schools

■ Are there state and local laws that clearly prohibit discrimination against transgender people?

Yes. California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, 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 like restaurants, hospitals, and retail stores; Maine's law covers those categories plus access to credit and education.

At least 200 cities and counties have banned gender identity discrimination, including Atlanta, Austin, Boise, Buffalo, Cincinnati, Dallas, El Paso, Indianapolis, Kansas City, Louisville, Milwaukee, New Orleans, New York City, Philadelphia, Phoenix, Pittsburgh, and San Antonio, as well as many smaller towns.

The governors of Indiana, Kentucky, Michigan, New York, and Pennsylvania have issued executive orders banning discrimination against transgender state workers. Some cities and counties have also protected their transgender public employees through local ordinances, charter provisions, or other means. People discriminated against by public entities on the basis of gender identity might also be able to argue that the government's action was unconstitutional.

■ Do laws banning 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 discrimination bans protect people not only based on their actual sexual orientation, but also on the basis of how people perceive them. This means that in most places where sexual orientation discrimination is illegal, it's against the law to discriminate against a transgender person because of a belief that the victim is "gay" – even if that perception is wrong!

■ **Do federal laws protect transgender people against housing and employment discrimination?**

So far, Congress has been slow to pass laws that clearly protect people against discrimination based on gender identity. However, in recent years a series of court decisions and other developments have made more and more clear that federal laws against discrimination based on "sex" apply to discrimination based on gender identity.

EMPLOYMENT

Title VII of the 1964 Civil Rights Act prohibits discrimination on the basis of sex (among other characteristics) by an employer with 15 or more employees. Although there are some court decisions, mostly older ones, saying that Title VII does not prohibit gender identity discrimination, several federal appeals courts that have considered the issue recently have found some protections in the Civil Rights Act for transgender people. In addition, a federal district court in Washington, D.C. ruled that employment discrimination for transitioning from one gender to another is illegal sex discrimination under the Civil Rights Act. In 2014, U.S. Attorney General Eric Holder announced that his office agrees with this position and going forward the U.S. Department of Justice will consider discrimination against transgender people to be discrimination "because of sex" in violation of federal employment law.

Transgender people 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 ruled that discriminating against someone because that person is transgender is discrimination based on sex, which violates Title VII. The EEOC investigates the reports of discrimination it receives, and can arrange mediation, broker a settlement between an employer and an employee, sue an employer,

or give the person complaining permission to bring her own lawsuit.

HOUSING

Similarly, the U.S. Department of Housing and Urban Development (HUD) has stated that discrimination against transgender tenants or home buyers based on their gender identity or gender nonconformity may be illegal sex discrimination under the federal Fair Housing Act. More information is available at <http://1.usa.gov/Ly5HTl>. HUD has also told homeless shelters around the country that where shelter housing is segregated by gender, they must allow transgender people access based on their gender identity. In addition, transgender people can't be discriminated against in shelters, or other programs for survivors of violence, that receive federal funding under the Violence Against Women Act.

■ Do state laws that bar sex or disability discrimination protect transgender people?

Some state courts and administrative agencies (such as in California, Connecticut, Hawaii, Massachusetts, New Jersey, New York, and Vermont) have ruled that their state sex discrimination laws cover discrimination against transgender people.

Federal laws that prohibit disability discrimination specifically exclude coverage for [gender dysphoria](#), as do some state disability laws (e.g., Indiana, Iowa, Louisiana, Nebraska, Ohio, Oklahoma, Texas, Virginia). California, on the other hand, changed its disability law in 2000 to remove the exclusion and allow claims based on discrimination against someone for having gender dysphoria.

Courts or administrative agencies in a few states (e.g. Florida, Illinois, Massachusetts, New Hampshire, New Jersey, New York, and Washington) have ruled that state disability laws protect people against discrimination based on gender dysphoria.

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

Although the Supreme Court has never considered this question, we think the answer is yes. It's important to remember, however, that constitutional protections only cover

discrimination or mistreatment by the government, not by private businesses or individuals.

A few federal courts have ruled that the Constitution's guarantee of equal protection under the law bars the government from discriminating against people based on their transgender status or [gender transition](#). For example, a federal appeals court in 2011 ruled in favor of a transgender woman whose boss fired her from her state government job because he was uncomfortable with her gender transition. The court ruled that "discrimination against a transgender individual because of her gender nonconformity is sex discrimination, whether it's described as being on the basis of sex or gender." However, how courts view constitutional equality protections for transgender people is an area of the law that's still evolving.

At the ACLU, we believe that the First Amendment, which bars the government from censoring speech or expression, should also protect individuals' right to wear clothes or groom themselves in ways that express their personal sense of gender. There aren't a lot of court decisions on this yet, but we hope eventually to see courts rule that [gender expression](#) is protected by the First Amendment. We also believe that the rights to "liberty," "privacy," and "autonomy" courts have found to be protected under the Due Process Clause of the U.S. Constitution should extend to transgender people's ability to make decisions about self-expression, medical care, and more, but there isn't much law on that issue yet either.

State constitutions are also a source of protection against discrimination by state and local government, although some state constitutions provide exactly the same equality and liberty protections as the U.S. Constitution while others go farther.

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

More and more, schools are protecting transgender students from harassment or discrimination. Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Vermont, Washington, and the District of Columbia have state laws that specifically protect transgender students in public schools from harassment and/or discrimination. Some of these state laws explicitly apply

to education, while other states (including Colorado, Delaware, Illinois, Maine, New Jersey, Nevada, Vermont, and Washington) include public schools in their bans on gender identity discrimination in public accommodations. In Colorado, Illinois, Maine, Nevada, New Jersey, and the District of Columbia, gender identity discrimination laws also cover some or all non-religious private schools. Several states also have more general laws that ban bullying and harassment of any sort but don't specifically mention gender identity. California passed a law in 2013 specifically allowing public school students access to gender-specific school activities (e.g., sports teams) and facilities (e.g., locker rooms) that match their gender identity, although we believe this was already required under prior California law. Several of the states where gender identity discrimination is prohibited in public schools (including Connecticut, Colorado, and Massachusetts) have issued rules or instructions explaining what schools must do to accommodate transgender students, in areas like updating educational records, accessing appropriate restrooms, and preventing bullying. Many individual school districts all over the country have also created policies to address these issues.

Title IX of the Education Amendment Acts of 1972 is the federal law that prohibits sex discrimination in educational programs that receive federal money. Title IX covers all public schools and universities, and some private ones. It has been interpreted to ban discrimination based on gender nonconformity, including a school's failure to protect a student from gender-related harassment. This means that Title IX should protect transgender students from harassment and discrimination based on gender identity. The U.S. Department of Education's Office of Civil Rights, which enforces Title IX, agrees, although the issue has not been fully resolved in court yet. Title IX also requires schools to respond appropriately to reports of sexual harassment or sexual violence against any student, including transgender students. A student who believes their rights under Title IX have been violated can file a complaint with the Office of Civil Rights (<http://1.usa.gov/1KdPjU3>).

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

Nondiscrimination laws that cover gender identity should protect student athletes who want to participate in gender-segregated sports consistent with their gender identity.

Several states' education agencies or school sports associations have adopted policies on this issue. For example, California, Connecticut, and Washington allow transgender students to participate in sports consistent with their gender identity regardless of the sex they were assigned at birth. A few states have more complicated procedures for deciding a student's eligibility for gender-specific school activities, including sports, by evaluating things like the students' school records, their medical history, and the "advantages of their participation." Several states have no clear policy on this issue, leaving school districts to establish their own policies to determine which team a transgender athlete will compete on and which locker room they will use.

The National Collegiate Athletic Association, which oversees competitive sports at over 1,000 colleges and universities, allows transgender students to participate in sex-segregated sports consistent with their gender identity as long as they're 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. For various reasons, this type of policy works better at the college level than it would in a K-12 school context.

■ **Does the law protect a transgender person's right to use the restroom consistent with their gender identity?**

There's no clear answer here because very few courts have considered this question and the results have been mixed. In two recent positive decisions, an administrative agency in Colorado in 2013 and the Maine Supreme Court in 2014 both ruled that under those states' gender identity discrimination laws, transgender girls had the right to use girls' restrooms at their public schools. On the other hand, a 2001 Minnesota Supreme Court decision found that even a law prohibiting gender identity discrimination didn't necessarily protect a transgender woman's right to use the women's restroom at work. And a federal appeals court in 2007 upheld the Utah Transit Authority's decision to fire a transgender bus driver,

based on a claim that her employer could be sued for her use of women’s public restrooms along her bus route. In a non-workplace context, a New York appeals court ruled in 2005 that it wasn’t sex discrimination for a building owner to prevent transgender people from using gender identity-appropriate restrooms in a building where several businesses shared restrooms.

Authorities in some jurisdictions (e.g., Colorado, Iowa, Oregon, Washington State, San Francisco, New York City, and the District of Columbia), however, have specifically said that denying transgender people the right to use a gender identity-appropriate restroom violates their nondiscrimination laws. Some jurisdictions (e.g., Iowa, San Francisco, and D.C.) go farther and make clear that transgender people can’t be required to prove their gender to gain access to a public restroom, unless everyone has to show ID to use that restroom. Other jurisdictions (e.g., Chicago) continue to allow businesses to decide whether a transgender patron may access men’s or women’s restrooms based on the gender on their ID, which may or may not reflect accurately the person’s gender identity.

Many businesses, universities, and other public places are installing single stall, gender-neutral restrooms, which alleviate many of the difficulties that transgender people experience when seeking safe restroom access. Some cities (such as Austin, Philadelphia, Washington, D.C., and West Hollywood) have local laws that require single-stall public restrooms to be labeled as unisex. While this is often a useful step towards addressing the concerns of transgender people and others, the ACLU believes that transgender people should have the right to use restrooms that match their gender identity rather than being restricted to only using gender-neutral ones.

Name Change and Identity Documents

■ Can a person change their name to reflect their 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. This is free and easy, and can protect the individual from later claims that using the preferred name constituted “fraud,” but doesn’t

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 as long as they're convinced that the petitioner is not trying to evade debts or the police. A number of states require anyone who wants to change their name to publish a legal notice of the change in a local newspaper. Name changes are often harder to obtain for people with past criminal convictions. In rare cases, judges have required a transgender person seeking a name change to prove that they had undergone medical procedures that show they intend to live permanently in the gender associated with the new name, but in most states this isn't required.

■ **Can a transgender person get the name and gender marker changed on their driver's license or state ID card?**

Yes. Every state has some kind of procedure for people to make these changes. A court ordered name change is usually necessary to change the name on a driver's license.

Requirements for changing the gender marker on a driver's license vary widely from state to state, but a majority of states don't require proof of [gender confirmation surgery](#). Many states do require the applicant to submit a form or affidavit signed by their health care provider confirming their gender identity. A few states still require proof of surgery and/or a court order to change the gender marker on a driver's license. Check with your state's motor vehicle agency to find out the exact procedure in your state.

■ **Can a person get the name and gender marker changed on their birth certificate?**

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

In a majority of states, changing the gender marker on one's birth certificate requires proof of surgical treatment to change one's sex. What the law means by "surgical treatment" is often unclear. A growing number of states (e.g. California, New York, Oregon, Vermont, Washington, and the District of Columbia) allow an individual to change the gender marker on

their birth certificate by showing proof of appropriate clinical treatment, which is 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 do not allow gender markers to be changed on birth certificates at all.

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

Although changing the gender marker on one’s birth certificate should put to rest all questions about one’s legal gender, there have been cases, usually involving marriages, where courts have ignored the corrected birth certificate. For example, when only different-sex marriage was allowed, courts in Kansas and Texas considered only the birth-assigned sex when ruling on a person’s sex for the purpose of deciding whether their marriage was valid. These courts ignored the fact that the transgender people in these cases had corrected birth certificates from the other states in which they were born. Similarly, in an Illinois case, a court looked past a transgender man’s reissued birth certificate, which had a male gender marker, and ruled that he should be considered female for purposes of state marriage law because there were other surgeries he hadn’t 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 deciding whether her marriage to a man was valid. Additionally, before the federal government began recognizing the marriages of “same-sex” couples, 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 people get a court order declaring a legal change of gender for added protection. (To save time and money, some advocates recommend doing this at the same time one requests 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 cause other institutions and courts to view one’s sex as legally changed.

■ **Can a person change the name and gender on their 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 get a first passport with the correct gender marker, a transgender applicant must submit a letter from their doctor certifying that they have undergone "appropriate clinical treatment" for transition to the new gender. (This "appropriate clinical treatment" doesn't have to include surgery.) This letter can be used to obtain a new passport valid for 10 years. There is also a two-year passport available for applicants who present a letter stating that their clinical transition is "in process," but any transgender person who has begun treatment should be able to qualify for a full 10-year passport. Along with the physician letter, the applicant must submit the other parts of a standard passport application. Detailed instructions for updating the name and gender on a passport are available from the U.S. Department of State (<http://1.usa.gov/1aK739D>).

■ **Can a person change their name and gender marker with the Social Security Administration?**

Yes. To change their name with the Social Security Administration (SSA) and get a new Social Security card, a person needs to submit a court order reflecting the name change. To change the gender marker in SSA's records, one can submit any of the following: a passport or state-issued birth certificate with the new gender marker, a court order of gender change, or a doctor's letter identical to that required for changing a passport gender marker (see above).

■ **Is it beneficial to change one's name and gender with the Social Security Administration?**

Yes. Having an SSA record of one's gender that is consistent with the gender marker on other identity documents could help avoid problems such as when someone checks for a match between a person's SSA records and other identification. For example, many state agencies that issue driver's licenses will only do so if the information used on a driver's license application matches the person's SSA record.

Family Matters

■ Does gender transition affect the validity of one's marriage?

Generally, no. A marriage is valid unless and until one or both spouses get a divorce or annulment.

In the past, courts considering the validity of transgender people's post-transition marriages to people of a different gender have reached mixed results. Although it's still possible that an ex-spouse would try to contest the validity of a marriage entered into in a state that didn't at the time recognize the marriages of "same-sex couples," this issue is likely to come up less frequently as more and more jurisdictions recognize marriages regardless of gender.

To help protect against any potential legal problems, 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 adopt the children through a second parent adoption to better protect their parental rights. Information on second parent adoption and other issues for transgender parents can be found in "Protecting the Rights of Transgender Parents and their Children: A Guide for Parents and Lawyers," a joint publication of the ACLU and the National Center for Transgender Equality available at <http://www.aclu.org/transgender-parent-guide>.

■ Does being transgender affect parental rights?

Sometimes.

Many parents who come out as transgender are able to maintain a close relationship with their children, including some who divorce but 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 child custody fights. 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 claims that transgender people can't be good parents and fairly considering what would be in the best interest of the child (e.g., looking at 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 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 imagined harm, rather than evidence. In others, the transgender parent didn't (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 very important in any contested child custody case to submit evidence disproving the negative claims the other side may make about transgender parents. Again, more information is available at <https://www.aclu.org/transgender-parent-guide>.

There have also been cases where the child's gender non-conforming or transgender identity became an issue in a custody battle. This usually happens when one parent accepts and supports the child's gender identity, but the other parent doesn't and argues that affirming the child's gender identity is harming the child. Here, too, refuting negative claims about the consequences of affirming a child's gender identity, preferably with expert testimony, is very important.

Health Care Coverage

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

Medicare covers transition-related hormone therapy. A 2014 administrative ruling struck down the previous blanket Medicare policy of refusing coverage for any form of gender-confirmation surgery, though we're still working to clarify which specific procedures Medicare will cover. Also, many transgender people have had difficulty finding surgeons who are willing to perform gender confirmation surgeries at Medicare's low reimbursement rates.

Historically, Medicaid programs have denied coverage for transition-related treatment. However, this is beginning to

change, as several states (e.g., California, Maryland, Massachusetts, New York, Oregon, and Vermont) have updated their Medicaid rules to provide hormone therapy for gender dysphoria, hormone blockers for transgender adolescents, and/or gender-confirmation surgeries.

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

This partly depends on what the employer's or insured individual's contract with the health insurance company says. Many insurance contracts either definitely 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 didn't clearly exclude this coverage.

In several states (e.g., California, Colorado, Illinois, Massachusetts, New York, Oregon, Vermont, Washington State, and the District of Columbia), the state government has said that state laws against gender identity discrimination and/or discrimination based on medical diagnosis mean that insurance policies issued in those states must cover transition-related treatments if they cover the same treatment for other medical conditions. This has helped many transgender people living in those states to get coverage for gender confirmation surgeries.

As awareness grows that treatment for gender dysphoria is medically necessary for many transgender people and the cost of covering it is manageable, more employers are offering health insurance plans that cover transition-related medical treatment. Hundreds of employers are now offering health insurance plans that cover transition-related medical treatment, from Fortune 500 corporations to smaller firms and nonprofits. More and more government entities also cover transition-related care through their employee health plans. Some employers have set up programs to pay for transition-related health care not covered by their health insurance plans, although this approach may pose privacy risks. Additionally, many public and private universities now cover transition-related medical treatment for students.

We are still 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 someone is transgender?**

Sometimes insurance companies refuse any coverage once they find out that the policy holder has been diagnosed with gender dysphoria. This is happening less often, in part because it would be improper denial of coverage based on a preexisting condition under the federal Affordable Care Act.

Another issue arises when insurance companies ask people to state their gender and then limit coverage to treatment that the insurer thinks matches that gender (aka “gender congruent” care). This obviously causes problems for transgender people who need screenings or treatment the insurer sees as inconsistent with their gender (e.g., Pap smears for a transgender man). Although some transgender people have tried to avoid this problem by leaving their “old” gender marker on medical records, that approach can also make it harder to receive appropriate care and respect in health care settings. Sometimes, transgender people and their health care providers have been able to fix these problems by simply explaining the situation to an insurer and getting a human to override a computer-based denial.

The ACLU believes that state laws against insurance discrimination based on gender identity and/or sex, as well as nondiscrimination provisions in the federal Affordable Care Act, generally ban denial of coverage for “gender incongruent” health care. There have been few court decisions on this so far.

Criminal Law and Transgender People

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

Yes. Since 2009, the federal hate crimes law has covered gender identity, which means that the federal government assists local law enforcement in investigating and prosecuting crimes where the victim was targeted because of their gender identity, and people who commit such crimes may be

subject to tougher penalties. Similarly, more than a dozen states have hate crime laws that clearly protect transgender people. In several states, transgender people are also sometimes protected when hate crime laws cover perceived sexual orientation, or under laws covering hate crimes based on “sex.”

■ **Is crossdressing against the law?**

In general, no. Bans on crossdressing have been successfully challenged and many cities have taken steps in recent years to remove even unenforced laws banning crossdressing from their books. However, a few localities around the nation still have such laws in place. Anyone ticketed or arrested under a crossdressing law should think about fighting back in court, because there’s a good chance that the law will be ruled unconstitutional.

■ **Can a transgender person run into legal trouble for using a restroom that is consistent with their gender identity?**

It rarely comes up, but in places without strong antidiscrimination protections, transgender people can sometimes face 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 restroom at a hospital. An Idaho transgender woman in 2013 was informed by the police that she was unwelcome for the next year at a local supermarket, because she had used the women’s restroom there. In contrast, a discrimination complaint filed by a transgender woman who was arrested in a train 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.

■ **Can a person be stopped and/or interrogated by the police based solely on their gender identity or gender expression?**

This shouldn’t happen but has often been a problem. Police often target for suspicion anyone who looks “different” or does not conform to their expectations, which can include visibly transgender people. Transgender women of color, in particular, have often faced extra scrutiny from law enforcement officers who assume that they must be engaging in sex work. Fortunately, in recent years law enforcement officials

have begun to acknowledge that such practices are unfair and do not help prevent crime. In 2014, the U.S. Department of Justice advised federal law enforcement agencies, including the FBI and ICE, that they may not profile or target individuals based on their gender identity. Several local police departments have also adopted policies that prohibit profiling of transgender people and/or that instruct officers on things they should do to treat transgender people respectfully, such as using preferred names and pronouns. Examples include Atlanta, Boston, Chicago, New York City, and Washington, D.C.

■ **Do transgender people have the right to be searched by someone of the same gender identity?**

It depends on the type of search and where it is taking place. If police stop someone on the street for questioning and do a quick “frisk” or “pat-down” without arresting the person, that person does not have a legal right to ask that a different officer perform the pat-down. However, if a transgender person has been arrested and/or taken to jail and is being strip-searched, they sometimes do have the right to request a search by an officer of the same gender, depending on state laws, local policies, and whether any sort of “emergency” exists. It is important for people in police custody to stay calm while making such a request and to bear in mind that arranging for an officer of the same gender to do the search may cause the arrest and booking process to take longer.

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 prison officials’ decisions about where prisoners should be housed. Most prisons still categorically house transgender women (particularly those who haven’t had genital surgery) in male facilities, and transgender men in female facilities. Nevertheless, a growing number of systems are developing more nuanced and 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.

The federal Department of Justice has enacted regulations pursuant to the Prison Rape Elimination Act (PREA) 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), restrict 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. These regulations currently apply to all correctional facilities that receive federal funding, including most state prisons and local jails, although some jurisdictions have publicly acknowledged that they are not complying with the PREA regulations.

■ **Do transgender prisoners have a right to get transition-related health care?**

The Eighth Amendment to the Constitution prohibits cruel and unusual punishment, which courts have said includes “deliberate indifference” to a prisoner’s medical needs. Using this argument, some prisoners have been able to persuade judges to order prison officials to provide hormone therapy and/or evaluate them for surgery. In 2011, a federal appeals court upheld a ruling striking down as unconstitutional a Wisconsin state law that banned hormone therapy and gender confirmation surgery for transgender inmates.

Under a policy enacted in 2011, transgender people detained in federal prisons, federal jails, federal halfway houses, and private prisons that contract with the U.S. Bureau of Prisons have the right to receive an evaluation for gender dysphoria, and gender-confirming medical treatment if the evaluation shows they need it. This is true whether or not a prisoner was prescribed hormone therapy before entering federal custody. Many state prison systems and some local jails now have similar policies. In practice, however, even prisoners in systems with good policies on the books often encounter numerous obstacles to getting the health care they need.

More information can be found in “Know Your Rights - Laws, Court Decisions, and Advocacy Tips to Protect Transgender Prisoners,” a joint publication of the ACLU and the National

Center for Lesbian Rights available at <http://www.aclu.org/transprisonrights>.

Transgender Immigrants

■ **May a transgender immigrant be granted asylum in the United States because of anti-transgender harassment in their country of origin?**

Yes. Transgender immigrants are sometimes granted asylum because they've been persecuted at home for not conforming to cultural expectations about gender roles. While many immigration courts have confused sexual orientation with gender identity, it's clear that transgender people are in many countries a persecuted group, and thus entitled to protection under U.S. 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 also has to prove either that the government persecuted him or her or refused to do anything to stop the abuse.

Notes on Words and Phrases Used

When talking about transgender people, we sometimes use words that are unfamiliar or mean different things to different people. 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 (or both or neither).

GENDER EXPRESSION

The way a person reveals their gender identity to the rest of the world is gender expression. A person's clothing, mannerisms, voice, hairstyle, 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. Some of those identities and experiences include people whose gender identity is different from the sex they were assigned at birth, people who transition from living as one gender to another or wish to do so (often described by the clinical term “transsexual”), people who “cross-dress” part of the time, and people who identify outside the traditional gender binary (meaning they identify as something other than male or female). Some transgender people describe themselves as gender variant or gender nonconforming.

Not everyone who doesn’t conform to gender stereotypes, however, identifies as transgender. Many people don’t conform to gender stereotypes but also continue to identify with the gender assigned to them at birth, like butch women or femme men.

(GENDER) TRANSITION

Transition or gender transition describes the social and sometimes medical process a transgender person goes through to bring their lived experience into line with their gender identity. Steps in the transition process can include changing the name and pronouns one goes by, updating formal documents to reflect a different gender marker and name from the ones assigned at birth, changing one’s style of dress and other aspects of gender expression, and, in some but not all cases, pursuing medical treatments such as hormone therapy and/or gender confirmation surgery that help make one’s body look and feel more feminine or more masculine.

Some transgender people don’t feel that the concept of transition fits their experience, either because they feel they were always transgender and “transition” steps aren’t necessary to validate their true identity, and/or because they identify as neither male nor female and feel that transition doesn’t accurately describe their process of coming out as agender, bigender, gender fluid, or another nonbinary identity.

GENDER DYSPHORIA (FORMERLY KNOWN AS “GENDER IDENTITY DISORDER”)

“Gender Identity Disorder” was for many years the medical diagnosis given to people who experience a disconnect between the sex they were assigned at birth and their gender identity.

However, the American Psychiatric Association replaced the term “Gender Identity Disorder” with “Gender Dysphoria” in the 2013 5th edition of its widely used Diagnostic and

Statistical Manual. This change was made in part because labeling a disconnect between one's gender identity and one's body a "disorder" stigmatizes transgender people. The criteria for diagnosing this condition have also been updated to clarify that gender nonconformity is not a mental illness, although some transgender people suffer negative mental health consequences from the disconnect between their bodies and identities and/or as a result of widespread discrimination and stereotyping.

GENDER CONFIRMATION SURGERY

This term can refer to any of the surgical procedures that may be part of gender transition. Depending on a person's specific needs, gender confirmation surgery might involve several different types of genital reconstruction procedures, breast augmentation or reduction, removal of the uterus and ovaries (for transgender men) or the testes (for transgender women), and/or surgery to change the shape of the face and throat.

This term works better than the commonly used phrase "sex reassignment surgery" because that wording suggests that all transgender people need surgery to "reassign" their sex before their gender identity can be respected, when in fact individual needs vary and not all transgender people need, want, or are able to access surgery. In addition, people and courts have often used the term "sex reassignment surgery" erroneously thinking that it refers to one specific genital surgery that completes a person's gender transition or "sex reassignment."

PUBLIC ACCOMMODATIONS

A public accommodation is an establishment that makes its premises, goods, and/or services available to the public. It may be publicly or privately owned. Legal definitions of public accommodations vary from state to state, but typical examples include restaurants, retail stores, hotels, places of entertainment like sports arenas or movie theaters, hospitals and medical offices, public parks, and public transportation. A private club is NOT a public accommodation, nor is a church.

CONTACT US



American Civil Liberties Union

Lesbian Gay Bisexual Transgender & HIV Project

125 Broad Street, 18th Floor

New York, NY 10004

212.549.2627

lgbthiv@aclu.org

aclu.org/lgbt



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