

2016

# Discrimination and Hate Crimes against the Trans Community

Sarah Pettigrew  
*Western Oregon University*

Follow this and additional works at: [http://digitalcommons.wou.edu/honors\\_theses](http://digitalcommons.wou.edu/honors_theses)



Part of the [Gender and Sexuality Commons](#), and the [Legal Studies Commons](#)

---

## Recommended Citation

Pettigrew, Sarah, "Discrimination and Hate Crimes against the Trans Community" (2016). *Honors Senior Theses/Projects*. Paper 117.

This is brought to you for free and open access by the Student Scholarship at Digital Commons@WOU. It has been accepted for inclusion in Honors Senior Theses/Projects by an authorized administrator of Digital Commons@WOU. For more information, please contact [digitalcommons@wou.edu](mailto:digitalcommons@wou.edu).

**Discrimination and Hate Crimes Against the Trans Community**

by

Sarah Ellen Pettigrew

An Honors Thesis Submitted in Partial Fulfillment of  
the Requirements for Graduation from the  
Western Oregon University Honors Program

Prof. CM Hall,

Thesis Advisor

Dr. Gavin Keulks,

Honors Program Director

July 2016

### Abstract

The transgender community is a small subculture within the LGBTQ community that has endured a lot of discrimination from a predominantly cisgender society. Cisgender is a term used to describe people who identify with the sex they were assigned at birth, and transgender is a term used to describe people who identify with a gender different from the sex they were assigned at birth. This research will examine the history of the oppression that this community has faced with a focus on the current situation and an outlook for the future. Literature on the topic will be reviewed as well as a discussion of current legal changes affecting trans people. The goal of this paper is to bring to light a community that is not well-understood and to expose the oppression that occurs within it. The ambition of this paper is to raise awareness, with the hope of reducing future oppression and discrimination towards trans and gender non-conforming people.

Although many of those in the LGBTQ community share these experiences and feelings, those who are not a part of the transgender community may not be fully aware of the injustices they experience. The purpose of this paper would be to inspire a discussion of the complexities of gender and how living authentically can come with a price. Ultimately, the goal is to bring awareness to this serious issue, and to inspire change in areas of oppression and marginalization in the United States.

## Table of Contents

<u>GENDER AND SEXUALITY: AN INTRODUCTION</u>	4
<u>Trans Discrimination: An epidemic</u>	7
<u>FINDING EMPLOYMENT AS A TRANS INDIVIDUAL</u>	9
<u>Employment Non-Discrimination Act (ENDA)</u>	13
<u>The Obama Administration and Trans inclusive employment</u>	16
<u>ACCESSING RESTROOMS AS A TRANS INDIVIDUAL</u>	17
<u>TRANS DISCRIMINATION IN HEALTHCARE</u>	21
<u>Trans interactions with medical staff</u>	23
<u>Insurance for gender-affirming surgery</u>	25
<u>Side effects of discrimination: Nontraditional sources</u>	26
<u>VIOLENT HATE CRIMES AND TRANS RECOGNITION IN LAW</u>	28
<u>Trans Visibility and Fluid Identities</u>	30
<u>Trans hate crimes and interaction with police</u>	31
<u>A criminal justice system with Trans inmates: women in men's prisons</u>	34
<u>CONCLUSION</u>	36
<u>The importance of examining, and stopping, discrimination</u>	36
<u>Trans in America: Next Steps</u>	39
<u>REFERENCES</u>	42
<u>APPENDIX A</u>	47

## **Discrimination and hate crimes against the Trans<sup>1</sup> Community**

### **GENDER AND SEXUALITY: AN INTRODUCTION**

Gender is a personal experience. When someone says “I am a woman” or “I am a man” they have a specific personal view of what that identity means. For some people, ‘man’ and ‘woman’ do not fully encompass their personal identity and experience. The way one identifies can be different from the way society views them. The sex that is listed on a person’s birth certificate and assigned to them at birth is often the assumed gender of a person. The gender options available at birth are either female or male. The terms Assigned Female At Birth (AFAB) and Assigned Male At Birth (AMAB) are often used to discuss the experience of a transgender person’s “biological” sex. The terms Female-To-Male (FTM) and Male-To-Female (MTF) describe the transition process of transgender people. For example, a transgender woman could be referred to as MTF. This system of having only two options (male or female) is commonly referred to as the gender binary. The gender binary is a social construct. As a society we have formed the opinion that there are only two genders. Only having two genders creates a great divide, as the choice requires that an individual would either abide by their birth-assigned sex or the opposite listed sex (female or male). With only two options, our perception of clothing, hairstyles, professions, roles in the home, and even children’s toys in fast food meals is narrowly interpreted. This view, however, is not accurately reflective of everyone’s gender experience. Gender identity expands far beyond the male-female

---

<sup>1</sup> *The term Trans refers to anyone transgender person or person outside of the gender binary (i.e. anyone who does not identify as cisgender). Cisgender refers to those whose assigned sex at birth matches their gender identity according to societal norms. To see explanations of key terms as such, see Appendix A.*

binary. Gender identity is the way an individual identifies their gender, which could include being transgender, bigender, genderfluid, agender etc.<sup>2</sup>. Some people in the trans community do not identify as male or female, so the gender binary does not apply to them and only complicates societal assumptions. The term ‘cisgender’ is used to describe someone who identifies with the sex they were assigned at birth. This means that when they were born and the doctor listed their sex as ‘male’ they grew up to also identify as a man. According to an examination of the 2010 census, “43,547–89,667 individuals changed their names from male to female or female to male...Of these, 16,155–21,833 also changed their sex-coding in the same direction as their name change”(Harris, 2015). Out of the total US population of 308,745,538 this would mean that approximately 0.005-0.029% of the population is transgender. This is only taking into account individuals who have changed their names and sex listed on official documentation, and does not include trans people who identify as trans, but keep their birth name and sex listed at birth. Other surveys show a slightly larger statistic, 0.5% identified as transgender in a health survey in Massachusetts (Conron et al., 2012) and the Williams Institute recently found that 0.6% or 1.4 million people in the United States identify as transgender, with 2.77% of Washington D.C. identifying as transgender (Flores et al., 2016). Despite the differing statistics, all of this data demonstrates that the trans community is a small minority within the US population.

Gender is a spectrum as well as a personal identity. Society has formed gender identities that are associated with traditional ‘gender roles’ (such as woman being homemakers and raising children and men providing income and fixing cars). As society

---

<sup>2</sup> For definitions of these terms see Appendix A

evolves to realize that these stereotypical gender roles are not applicable to modern society, it is also necessary that the gender binary does not remain the only option either. People express their gender through physical appearance such as the use of makeup, presence of facial hair and choice in clothing, to affirm their personal gender identity. The way one acts and speaks also reveals their personal gender identity. There are many aspects that help form a person's gender identity including gestures, vocal inflection and intonation, vocal pitch (low or high), and tendencies (or lack of) for physical contact. These aspects should not force a label onto an individual, but allow for a person to explore their gender identity as they discover the label that fits them.

Physical characteristics and expression also differ from gender identity. This is how gender expression, the way someone expresses gender, and gender identity are different. For example, if a self-identified female prefers to dress in 'masculine' clothing and wear their hair short. The onlooker's perception of the individual does not always equate to their gender identity.

In a similar way, how a person dresses is often associated with their sexual orientation. This, again, is a flawed perspective. Taking the above example of the female wearing 'masculine' clothing and short hair, an assumption that may be made is that she is attracted to women. There are many stereotypes attached to people who have sexual identities outside of heterosexuality such as gay men being effeminate by using exaggerated hand gestures and a higher-pitched vocal tone or lesbian women appearing more masculine or butch by wearing over-sized or athletic clothing. Heterosexuality is the sexual attraction between opposite sexes (i.e. a man attracted to a woman or a woman attracted to a man). Other sexual identities include gay (attraction of men to men or same

sex attraction), lesbian (attraction of woman to woman), bisexual (attraction to men and women), and pansexual (attraction to all people, regardless of sex). Sexual orientation does not equate to a physical “look”. Gay, bisexual, lesbian, and pansexual people do not “look” like their sexual orientation. Trans individuals cannot have their sexual orientation presumed. There are gay trans people and there are straight trans people; sexual orientation does not depend on gender identity.

### **Trans Discrimination: An epidemic**

Transgender individuals have a gender identity that differs from their assigned sex at birth. Transgender people often use names and pronouns that differ from the ones that were used with them as a child. Some trans people even choose to use “they/them/their” pronouns, as they do not identify as either a woman or a man.

The terms trans and transgender cover a variety of gender identities. It is important to remember that transgender individuals go through a transition (changing their name/sex on documentation, declaring their identity, coming out to friends/family, altering their physical appearance-facial hair, makeup etc.) as they come to accept their actual gender identity, but not all transgender individuals medically transition or undergo surgery. The occurrence of a surgery or medical transition does not prove the gender identity of the individual any more than a transgender individual who lives with the same body they were born into.

In addition to the complications of self-acceptance, transgender people face an overwhelming amount of discrimination and harassment from the majority population as 63% of respondents in a national survey on transgender discrimination reported experiencing a serious act of discrimination (loss of job, eviction, physical assault, sexual



assault etc.) (Grant et al., 2011). The issue of trans discrimination has become an epidemic in the US. An epidemic can be defined as “affecting or tending to affect a disproportionately large number of individuals within a population, community, or region at the same time” (Epidemic, 2016). Current issues and news events have put a spotlight on transgender people, and the result of this spotlight has been an intensity of discrimination and hate crime.

The fear of transgender people is referred to as transphobia. This fear can manifest itself in a variety of ways, most dangerously, violent action and discrimination. People are afraid of transgender people because they are scared of the unknown. They do not have a shared experience, so this difference in gender identity and expression can instill a fear of the unknown. Cissexim is the term used to describe the systemic discrimination against transgender people as cisgender people are established as the “norm”.

Trans individuals’ safety is at stake if societal changes are not made that fully integrate this group into society. In the areas of employment, healthcare, restroom access, and legal inclusivity, suggestions for inclusion are presented at the conclusion of this paper. A general lack of understanding and fear as well as media sensationalism has enflamed the misunderstanding of transgender people and undermines the importance of the safety of trans lives. A society that supports the ability for people to live as authentically as possible could allow for a reduction of the alarming rates of suicide among trans people. In a collection of data by the nation's leading trans political advocacy organization- the National Center for Transgender Equality (NCTE), transgender people are found to be at a heightened risk for suicide attempts with 41% of

trans people reporting having attempted suicide compared to 1.6% of the general population (Haas, Rodgers, Herman 2014; Grant et al., 2011). This data shows that an alarmingly amount of trans lives are at risk and there is a serious need to understand this community and their specific needs. Not only can trans lives be saved through education of these issues, but also hate crimes and discrimination can be prevented. The number of trans suicides could also be reduced. The following sections will provide an introduction to four of the main challenges trans people face today (employment, access to restrooms, healthcare, and interaction with law enforcement) in an effort to inform, educate and further reduce the incidents of discrimination.

### **FINDING EMPLOYMENT AS A TRANS INDIVIDUAL**

Historically, people who are transgender have faced a variety of discriminatory acts in the workplace. Discrimination in the workplace could include being fired from a job, not hired for a job, not receiving promotions, not being given access to the appropriate restroom, or being referred to with outdated pronouns or by the person's "dead name", which is the name they were given at birth that they no longer use. Often, these acts of discrimination occur without any legal protections for the transgender person. In a survey conducted by the NCTE, results showed that 71% of transgender people would rather hide their gender identity and even postpone gender-affirming surgery in order to avoid workplace harassment and discrimination (Grant et al., 2011). Ultimately, the wellbeing of these individuals is sacrificed for the sake of their financial livelihood. As a result of employment discrimination, people who are transgender are reduced to live in extreme poverty nearly four times that of the general cisgender

population (Grant et al., 2011). Knowing these statistics could cause a transgender person to feel pressured into hiding who they are in order to remain employed at their current workplace. There are 30 states that provide no form of legal protection for trans workers, as they do not have laws covering discrimination based on gender identity (Equality Maps, 2016).

Employees of the Federal Government have protections under amendments made by Executive Order No. 13762 on July 21, 2014 to Executive Order No. 11472 (1969) and Executive Order No. 11246 (1965). In Executive Order No. 11472 (1969) it states, “This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.” The addition of gender identity in this order has now allowed for the same rights for trans federal employees. In Executive Order No. 11246 (1965) it discusses the rights of government contract workers to be free of employment-related discrimination in the areas of “employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.” For non-federal workplaces in the 30 states that do not have established laws protecting transgender employees, Title VII of the Civil Rights Act has applied to certain claims of sex-based discrimination (“*Employment discrimination and transgender people*”, 2014).

Title VII of the Civil Rights Act protects people from being discriminated against based on their sex (“*Employment discrimination and transgender people*”, 2014). There has been much discussion, however, if people who are transgender fall under this

protection in terms of their gender identity. Courts have argued the difference between sex and gender, and whether gender identity truly falls under the protection of Title VII (Kuhn, 2015). Cases have been presented under Title VII that have transformed the idea of sex-based discrimination to also include discrimination due to sex-based stereotypes (Kuhn, 2015). In the case of *Price Waterhouse v. Hopkins*, Ann Hopkins was denied a position based on her lack of femininity and that she presented as too masculine (Kuhn, 2015). The result of her case was a broadened view of Title VII to include sex stereotyping (Kuhn, 2015). This stereotyping could apply to people who are transgender although the manner in which this is presented may differ. The federal entity known as the Equal Employment Opportunity Commission (EEOC) is the agency that investigates these claims, and Kuhn suggests that they must normalize protections for transgender employees (2015). He describes that the EEOC needs to make the process for filing these claims more acceptable and provide the resources and training for this to be more effective for trans people. Beyond this, Kuhn also suggests that the Supreme Court needs to take action in order for the wording of “sex” to be broadened to include gender identity (2015). This would require a Title VII claim to reach the Supreme Court and for them to explicitly state the definition of “sex” to include gender identity as well.

When taking Title VII claims of discrimination towards transgender employees to court, many cases have taken the “Gender Nonconformity Approach” (coined by Lee). This approach does not highlight the plaintiff’s transgender identity, but rather argues that regardless of the gender identity of the plaintiff, the claim pertains to sex stereotyping (Lee, 2012). In this case, the transgender plaintiff would not present the claim as one of discrimination based on gender identity, but rather on sex stereotyping

according to their assigned sex at birth (Lee, 2012). This sex stereotyping against a trans employee could look like a boss firing a trans-masculine employee because they dress in suits and have short hair, but their sex assigned at birth was female. This could also look like a boss not hiring an applicant who is a trans woman because of her appearance and vocal intonation. As both of these examples could classify as sex-stereotypes (i.e. their appearance or behavior does not match the stereotypes of their assigned sex) then Title VII could apply in these cases. There is, however, a downside to this approach as the discrimination against the transgender person based on their gender identity is completely ignored (Lee, 2012). Although this approach may be successful, the refusal to acknowledge the true nature of the acts of discrimination may have negative effects on the transgender plaintiff, as their identity is further oppressed and ignored.

In a survey conducted by the NCTE, findings showed that after transitioning, the work performance of trans employees improved, even though similar rates of reported discrimination occurred (2011). In a study by Dietert and Dentice, a crucial finding of their study of FTM men was the ability to have support and acknowledgement by using the appropriate pronouns and names (2009). For these reasons, it is fundamental that the transgender person has their identity acknowledged and affirmed throughout the entire process. For a transgender person, being authentic about their identity often means changing physical aspects of themselves. In this way, it can be hard for a transgender person to not come out to their employer and to live authentically at the same time. Many people who are transgender are diagnosed with gender dysphoria. *The Diagnostic and Statistical Manual of Mental Disorders* (5th ed.; *DSM-5*; American Psychiatric Association, 2013) defines gender dysphoria as an “incongruence” between the assigned

sex at birth and the expressed or identified gender. DSM-5 also states that this “incongruence” should occur for a period longer than six months. Misgendering and using “dead names” (the name someone is given at birth that they no longer use as it is associated with their sex assigned at birth) can have very real emotional and psychological effects. This can cause heightened anxiety and depression for transgender people, which is why using correct names and pronouns is critical to a trans individual’s overall wellbeing.

### **Employment Non-Discrimination Act (ENDA)**

For quite sometime, the only legal mechanism to defend claims of discrimination against trans people in the workplace and public accommodations has been through references to Title VII. However, there is a more explicit piece of legislation protecting trans rights that is working its way to becoming federal law. In 2013, Senator Jeff Merkley (D-OR) proposed a revised version of the Employment Non-Discrimination Act (ENDA) to the US Senate. Previous versions of ENDA excluded gender identity protections, and instead focused solely on protecting against acts of discrimination based on sexual orientation (Vitulli, 2010). This proposal of ENDA without the inclusion of gender identity was a political calculation yet perceived as an act of exclusion by the lesbian, gay, and bisexual community (Vitulli, 2010) and can even be considered (in an extreme sense) an act of horizontal discrimination within the larger LGBTQ community. Subsequent revisions to ENDA have been made which have included explicit statements of inclusion of gender identity. The following is the premise of the bill as:

“It shall be an unlawful employment practice for an employer—  
(1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because

of such individual's actual or perceived sexual orientation or gender identity; or  
(2) to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee, because of such individual's actual or perceived sexual orientation or gender identity.” (S. 815, 2013)

Although this proposed legislation passed the Senate on November 7, 2013 it still has yet to be voted on by the US House of Representatives (Congress.gov). For this reason, many transgender individuals are still legally and allowably discriminated against, and even fired from their jobs, solely based on their gender identity or expression. Although the passage of this piece of legislation would allow for the protection of transgender employees, Rudin et al. highlight the unfortunate reality of the current situation in a study on hostile responses to transgender employees (2014). The study found that employers would knowingly perform actions against transgender employees that the employers believed to be illegal, which included refusing access to restrooms matching the gender identity of the employee (Rudin et. al., 2014). The sad truth is that despite legal protections for people who are transgender, they will still face discrimination in the workplace. This substantiates that there is a long way to go in tackling transphobia and creating a safe place for transgender people to work. Although legislation like ENDA is crucial for the safety and security of people who are transgender, this type of protection at the federal level is not likely to happen soon according to Lee (2012). Historically, the Democratic Party has pushed for policy change that favors inclusion and rights for LGBTQ people. When ENDA reached the US Senate, 52 democrats voted in favor with no votes against, and republicans voted 10 in favor and 32 against (“Congressional Scorecard for the 113th Congress”). In the US Senate,

Respect for Marriage (S. 1236) asked for co-sponsors to repeal the Defense of Marriage Act. The measure received 44 democratic co-sponsors and 0 republican co-sponsors (“Congressional Scorecard for the 113th Congress”). Congress was asked to co-sponsor an earlier measure, Uniting American Families Act (H.R. 1537) to allow citizens and documented permanent residents in same-sex relationships to receive the same benefits as heterosexual spouses. There were 143 democratic co-sponsors and 2 republican co-sponsors (“Congressional Scorecard for the 112th Congress”). Traditionally, the Democratic Party supports LGBTQ progressive issues. As long as the majority of Congress is Republican, the likelihood of ENDA passing in the US House of Representatives is not likely.

When a law like this passes, which provides these protections, it will allow for people who are transgender to have a way to combat the discrimination they face, but it may not stop the actions from occurring. The National Center for Transgender Equality supports the passing of this act, but also feels that the Occupational Safety and Health Administration (OSHA) should give guidance on the access of sanitary facilities that are consistent with the employee’s gender identity. The NCTE also suggests that the US Department of Labor should provide help to people who are transgender in search of employment.

Although ENDA appears promising for the safety and security of transgender employees, there is a religious exemption clause that could still permit discrimination towards people who are transgender. This same exemption exists in Title VII Sections 702(a)

“This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation,



association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.”

and 703(e) “it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion...” (Civil Rights Act of 1964). This would allow any organization that is supported by a religious organization to be exempt of the conditions of the Act. The Human Rights Campaign’s Religious Exemption Fact Sheet describes how this exemption includes a broad range of organizations and that it can go beyond places of worship to include private schools and medical centers that do not accept federal funding (HRC).

### **The Obama Administration and Trans inclusive employment**

Although there are many challenges in finding employment as a transgender individual, the Obama Administration has made significant progress in reducing chances for discrimination. The Office of Personnel Management (OPM) “added gender identity to the equal employment opportunity policy governing all federal jobs” (“Obama Administration Policy Advancements on behalf of LGBT Americans”, 2015). This was then followed by the issuing of guidelines to federal managers with respect to the equal treatment of transgender employees in September 2011 (“Obama Administration Policy Advancements on behalf of LGBT Americans”, 2015). Another important action by the Obama Administration was the appointment of Raffi Freedman-Gurspan, the first out transgender woman, to serve as an LGBT liaison (Miller, 2016).

One barrier that transgender workers used to face was as simple as an application box, having to choose between the two binary terms: male or female. In the past, for

transgender people who put down their actual gender that is not reflected on their birth certificate, social security card, or other legal documents, this could be flagged by government agencies as a “gender no-match”. In September 2011, “the Social Security Administration announced that it would no longer issue “gender no-match” letters to employers during the clearance process for potential employees. This change protects transgender applicants from being unnecessarily outed to potential employers by the SSA” (“Obama Administration Policy Advancements on behalf of LGBT Americans”, 2015). This change not only allows for transgender individuals to seek employment without fear of selecting an “incorrect” option, but they are also empowered to reveal their gender identity on their own terms.

### **ACCESSING RESTROOMS AS A TRANS INDIVIDUAL**

Using the bathroom is inarguably a private matter. On March 23, 2016 this private matter was brought to public attention, as politicians in North Carolina proposed and passed a bill (HB2) regulating the use of bathrooms. The bill states that the bathroom one uses must align with the sex listed on their birth certificate. This bill was proposed in response to a recently passed anti-discrimination ordinance in Charlotte “barring discrimination against gay or transgender people, and specifically allowing people to use bathrooms and locker rooms that conform to their gender identity.” (Blinder, Pérez-Peña, Lichtblau, 2016). Although many bills and laws are progressing the rights of transgender people, laws such as these are acts of discrimination against the transgender community. US General Attorney Loretta Lynch stated that North Carolina’s House Bill 2 “created state-sponsored discrimination against transgender individuals, who simply seek to

engage in the most private of functions in a place of safety and security – a right taken for granted by most of us.” As many restrooms are sex-segregated, the issue of where trans people can feel safe and secure is ignored with bills like HB2. The sex listed on the birth certificate, as male or female, is based on assumptions relating to genitalia. However, what is typically thought of as ‘male genitalia’ does not mean that a person is a man. There are trans women (AMAB) who choose to never undergo physical alterations of their body. This does not mean their body (or any parts of their body) is male. Their body is female as their identity is female and they accept their body as part of who they are. It is more appropriate and inclusive to refer to genitalia as an overarching term, or to refer to the specific genitalia by its name rather than the assumed gender it is related to (i.e. vagina instead of “female genitalia” or penis instead of “male genitalia” etc.). Excluding people from using public accommodations, such as restrooms, based upon their birth certificate (and/or genitalia) is an act of discrimination against a marginalized minority. Laws like this, however, not only affect trans people, but cisgender individuals who express their gender in ways that do not align with societal norms. These individuals also experience a higher risk of discrimination. For example, if a woman who dresses in a way that is viewed as traditionally male, they could also be accused of violating these laws by those who enforce them based on appearance. This enforcement is under scrutiny as trans women are being harassed, further perpetrating harassment and violence *towards* women rather than protecting them from harassment.

This matter drew national attention and there was an outpouring of varied responses. On a corporate level, The Target Corporation issued a statement April 19, 2016 stating, “in our stores, we demonstrate our commitment to an inclusive experience

in many ways. Most relevant for the conversations currently underway, we welcome transgender team members and guests to use the restroom or fitting room facility that corresponds with their gender identity.” There was immediate backlash that included concerns for the safety of women and children. As arguments formed that men would use this as license to dress in women’s clothing and engage in sexually predatory tactics to corner women and children, nowhere in this discourse was a discussion of the safety of trans women and children.

The US Department of Justice responded by addressing the violations the new law posed, in that it violated Title VII of the Civil Rights Act. Within days Governor McCrory and a few legislative leaders filed lawsuits against the Department of Justice. That same day, the Justice Department filed a lawsuit against the state of North Carolina. Although House Bill 2 was an effort to illegalize and marginalize a subset of the population, Attorney General Lynch reminded the American people that “this is why none of us can stand by when a state enters the business of legislating identity and insists that a person pretend to be something they are not, or invents a problem that doesn’t exist as a pretext for discrimination and harassment.” These “problems” do not exist, but come from a real place of uncertainty and fear. Through education and familiarity with the trans community, it becomes clear that legislation that discriminates so bluntly against an oppressed and vulnerable group is not acceptable. Several states have introduced similar bills including Hawaii (HB 2181, HB 2532), Illinois (HB 4474), Indiana (HB 1079, SB 35) Kansas (SB 513, HB 2737), Kentucky (HB 364), Massachusetts (HB 1320), Michigan (HB 5717, SB 933), Minnesota (HF 3396, SF 3002), Missouri (HB 1624, HB 1847, HB 2303, SB 720), Mississippi (HB 1258, HB 1523), New York (AB 10127),

Oklahoma (HB 1597, HB 2215, HB 3049, SB 440, SB 1014, SB 1323, SB 1619), Oregon (HB 4061), South Carolina (HB 4761, SB 0108, SB 1203, SB 1301) South Dakota (HB 1008, HB 1007, HB 1112, HB 1209), Tennessee (HB 2414, SB 2387, HB 2600, SB 2275), Virginia (HB 77, HB 397, HB 431, HB 663, HB 781), Washington (HB 2589, HB 2782, HB 2935, HB 2941, SB 6443, SB 6548), Wisconsin (AB 469, SB 582), and Wyoming (HB 98) (NCTE, 2015).

Discriminatory law is a very real issue facing trans people currently. Trans Lifeline (a hotline for suicidal trans people) reported that the number of calls the hotline received doubled when North Carolina introduced HB2. Although the fears of cisgender people are overwhelming the rights of this marginalized community, the restroom is a dangerous place for trans people. In a study of trans people's experience using public restrooms, 9% reported physical assault and 68% reported verbal assault (Herman, 2013). Many transgender people fear using public restrooms to the extent that they purposefully avoid them. In the same study of trans people's experience in public restrooms, 54% of trans people "reported having some sort of physical problem from trying to avoid using public bathrooms, all of whom reported that they "held it" to avoid public restrooms" (Herman, p.75, 2013). These health outcomes include dehydration, urinary tract infections and kidney infections among others (Herman, 2013). Not only are transgender adults at risk for harassment, but trans youth also face these same challenges. In Virginia, a transgender student was denied access to the restroom matching his gender identity. Grimm filed a lawsuit claiming Title IX violations. The district court dismissed the case. In an appeal to the dismissal of this case, the US Court of Appeals for the 4th District

reversed the rulings of the original case as dismissible and the legal proceedings may continue.

One possible solution to this case is the increase of gender-neutral single-occupancy bathrooms. These signs are increasing in popularity as an alternative to gendered bathroom signs. Another more radical and evolved option is to start to implement all-gender bathrooms. Western Oregon University has implemented one of these and many other places (including John Hopkins, Michigan State, University of Utah, University of Nevada Las Vegas, Hampshire College, Santee Education Complex-a Los Angeles high school, and even the White House) are also providing this option (Kohli, 2016; Ball, 2015).

### **TRANS DISCRIMINATION IN HEALTHCARE**

Trans people have a variety of specific healthcare needs. Some of these are physical such as surgeries and medical exams, but there are also mental health needs. Not all trans people decide to undergo gender-affirming surgeries. Gender-affirming surgeries can include gonadectomy (remodeling genitalia to create a neovaginal cavity and clitoris), chondrolaryngoplasty (reducing the size of the Adam's apple), vocal surgery to change the pitch of the voice, rhinoplasty (facial feminization), bilateral mastectomy (removal of breast tissue), hysterectomy (removal of the uterus), bilateral salpingo-oophorectomy (removal of the Fallopian tubes and the ovaries), and metoidioplasty (creation of a neoscrotum and neophallus) (Unger, 2014). These surgeries are expensive, costing anywhere between \$10,000-\$50,000 (Cha, 2014) and are not always accessible, nor covered by health insurance plans. In addition to expenses, the recommended wait time before receiving these surgeries is after 12 months of hormone therapy (Coleman et

al., 2012). If hormone therapy is denied, the process of physical transition may be unwillingly put on hold. Denial of care is not uncommon, Irwig concluded in his study of endocrinologists, as one third admitted to refusing treatment to transgender patients (2016). The majority of endocrinologists in his study rated their competency in transgender care as “not at all” or “a little” (Irwig, 2016). Not only did the respondents not have an understanding of trans care, but 95% were not aware of the type of estrogen therapy that should be avoided as it is associated with Deep Vein Thrombosis/ Pulmonary Embolism (Irwig, 2016). This not only shows that trans people have to face the barrier of finding a provider who is willing to provide treatment, but they also have the disturbing barrier of finding a provider who is knowledgeable of the risks and safety of the therapy they may be prescribed. These findings are crucial to understanding the barriers that trans people face in their transitioning and access to healthcare.

Physical exams are also involved in trans healthcare. Mammograms, pap smears and prostate exams are an important part of preventative healthcare. Mammograms and pap smears are typically performed on females, however, trans men who either have not undergone surgery or who are in the beginning stages of transition may find it necessary to have these exams performed. Likewise, trans women may have to have prostate exams performed. Although these checkups are a critically important component of healthcare, trans people may experience discrimination if misgendered or ridiculed. Peitzmeier et al. performed a survey in Boston to assess the utilization of such care and if there was a difference between cisgender women and trans men being up-to-date on pap testing (2014). They found that FTM patients were 37% less likely to be current on regular pap screenings compared to cisgender female patients (Peitzmeier et al., 2014). Factors that

appeared to positively associate with being up-to-date included having health insurance and being a long time patient (Peitzmeier et al., 2014), proving that the provider-patient relationship is crucial to the health of transgender people.

### **Trans interactions with medical staff**

There are a variety of barriers to healthcare for transgender people. In a study in New York City in 2009, 32% of respondents stated lack of “access to a provider knowledgeable about transgender health issues” as a barrier to care (Sanchez et al.). Lack of access to a provider and the lack of knowledge healthcare providers have about trans individuals continues to marginalize the trans community, as transgender people are not considered in medical care or training. Unfortunately, many times transgender patients are left with the burden of teaching their medical provider about transgender care (Grant et al., 2011). Bauer et al. performed a study to examine the erasure of people who are transgender in healthcare settings (2009). They found that medical professionals’ knowledge of people who are transgender was typically just of the mental disorder known then as “gender identity disorder” (which is now referred to as gender dysphoria) (Bauer et. al., 2009). The knowledge of the transgender community and transgender healthcare is thought of as extremely important in order for transgender patients to follow through with treatments and stay with a physician (Sevelius, Patouhas, Keatley, and Johnson, 2013). Rondahl performed a study that discovered only 10% of nursing students had a basic level of knowledge regarding the LGBTQ community (2009). Studies like this show that trans people are likelier to experience discrimination and misunderstanding when receiving medical care. Many medical professionals receive no training on how to work with transgender patients. This misunderstanding between medical providers and



patients could also be the reason behind the refusal of medical care by the medical provider and by the transgender person (Grant et al., 2011). There have been reports of people who are transgender being denied access and harassed in hospitals and medical offices (Kurzweli, 2014).

Initial access to health care typically means filling out paperwork. Often, people who are transgender feel erasure in the documentation used by healthcare professionals (Bauer et. al., 2009). The appropriate name and pronouns are not always used or requested by healthcare providers (Bauer et. al., 2009). In a study of transgender men, the results showed that at least 35% of the participants were enrolled as female in their insurance policy (Rachlin, Green, and Lombardi, 2008). Even though the documents may display the patient's birth name, it would be a cissexist microaggression to refuse to use the patient's appropriate name and pronouns. This same study explained the need for not only the physicians, but also for office staff to address the patient using their appropriate name and pronouns (Rachlin, Green, and Lombardi, 2008). This type of environment allows for the patient to feel affirmed in their gender, but it should be done in a way that doesn't create unnecessary attention to the patient and their identity (Sevelius, Patouhas, Keatley, and Johnson, 2013). This could be done by providing an option on paperwork filled out in the office to list pronouns. Any paperwork that asks for a patient to list their sex/gender should also have a space on the form to list their pronouns in order to not misgender or use incorrect pronouns (as "she/her" or "he/him" pronouns can not be assumed based on the selected option in the sex/gender box). While the transgender patient should be addressed using their appropriate name and pronouns, doing so in a way

that reveals them as transgender could be form of outing (definition for “come out” in Appendix A) and can cause unnecessary psychological harm to the patient.

### **Insurance for gender-affirming surgery**

Another considerable hurdle that people who are transgender face in regard to healthcare is access to trans inclusive insurance coverage. In a study performed by Rachlin, Green and Lombardi, the medical care that trans people need include “preventative health care, critical care, and transcare”(2008, p.245). All three areas carry their own barriers for transgender patients. Many people who are transgender do not seek care because of fear of discrimination (Rachlin, Green and Lombardi , 2008). Those who do seek care, sometimes face discrimination ranging from misgendering to outright denial of service (Rachlin, Green and Lombardi , 2008). Although trans people used to experience outright discrimination for the “pre-existing condition” of being trans or being diagnosed with gender dysphoria, the Obama Administration challenged this barrier through the Affordable Care Act (ACA). The ACA prohibits insurance providers from denying coverage to trans people based on the pre-existing condition of being trans (Karlman, 2015). The ACA also prohibits the denial of sex-specific care such as mammograms and pap smears (healthcare.gov). As long as the medical care provider recommends the exams for the patient, insurance companies must cover the costs of these exams.

The fear of denial of healthcare services has been partially relieved due to the changes made under the ACA, however, individual insurance plans can specify that they will not cover transgender-related care (healthcare.gov). Although many people who identify as transgender are diagnosed with gender dysphoria, many insurance companies

will not pay for any transition-related expenses as they are considered elective procedures (Kurzweli, 2014). Transition-related care can include hormones, gender-affirming surgery, or mental health therapy (Kurzweli, 2014). Many of these transition-related expenses must be prescribed by a doctor (Rachlin, Green and Lombardi, 2008), and are not cosmetic or selective, but life-saving procedures. These discriminatory insurance policies do not create a safe environment for transgender people who try to access appropriate healthcare. Medicaid banned gender-affirming surgeries for thirty-three years, until the Obama Administration lifted this ban in 2014 (Cha, 2014). Medicaid is offered to people 65 and over or who are on permanent disability, so the majority of transgender people still do not have this benefit, however, private insurance plans often follow the policies of Medicaid to establish medically necessary treatment that should be covered (Cha, 2014). These surgeries can cost thousands of dollars, and be inaccessible for trans people who do not have the financial means to cover the costs of these surgeries. The exclusive and discriminatory insurance policies that do not cover these expenses can make a transgender person unable to access appropriate and necessary healthcare.

#### **Side effects of discrimination: Nontraditional sources**

As a result of the multitude of barriers transgender people face, trans people have needed to get creative in accessing treatment. As transition-related healthcare can be too expensive for people who are transgender to pay without insurance, a rise in crowdfunding to support these expenses has emerged (Farnel, 2014). This mode of paying for medical expenses has been successful for some people who are transgender, however, as Farnel points out, this type of fundraising only “serves to privatize and isolate what are systematic issues of inequality” (2014, p.216). Although people who are

transgender are getting access to the healthcare they need, they are doing so by being “required to appeal to more privileged populations for the right to surgical intervention”(Farnel, 2014, p.223). This only perpetuates the discrimination towards the transgender community. Allowing for the wealthy to decide the fate of a transgender person’s health care, rather than people who are transgender having full access to medically-necessary care for their physical and mental well being.

In addition to crowd funding for gender-affirming surgeries, obtaining hormones may require nontraditional methods. Hormone therapy can be another challenge transgender people face as they may be denied a prescription altogether as well as the concern for side effects and cost (Sanchez et al., 2009). Side effects are a serious concern as hypercoagulability (blood clots), depression, hyperprolactinemia (increase of prolactin), and migraines are a few of the effects to the body that are associated with the administration of estrogen (Sanchez et al., 2009). In a study by Sanchez et al. it was found that 23% of respondents obtained hormones from a source other than a physician (2009). In a similar study in San Francisco, Haan et al. found that 49.1% of trans women were taking hormones not prescribed by a clinician (2015). Due to limited access, trans people may turn to friends, street vendors, and online sources to obtain hormones (Sanchez et al., 2009). Although this may allow for transgender people to have access to the medications, their understanding of side effects is not as clear as those who were prescribed hormones by a physician (Mephram et al., 2014). Not understanding the side effects or misusing these treatments could result in further health issues as self-medicating is not fully safe and could lead to unexpected diseases or disorders from

unhealthy doses. The individual may not be able to treat these resulting health issues, as they do not feel comfortable or safe seeking treatment from traditional sources.

### **VIOLENT HATE CRIMES AND TRANS RECOGNITION IN LAW**

As mentioned earlier, the Employment Non-Discrimination Act could be life changing for people who are transgender. Unfortunately, there has been a history in public policy of excluding this vulnerable community. When it comes to public policy, these laws and acts are tied directly to the identity of the individual. Unlike other identities in the LGBTQ community (Lesbian, Gay, Bisexual, Pansexual, etc.) these individuals have their identity printed on many government documents. In this way, these documents can serve to out people who are transgender (Taylor, 2007). This required self-reporting can lead to discrimination including being denied employment, job harassment, and violence (Taylor, 2007).

There are many states where people who are transgender are discriminated against by being denied the ability to have their appropriate gender and name listed on their official documents. Thirteen states (Montana, Wyoming, Oklahoma, Iowa, Missouri, Louisiana, Texas, Kentucky, Tennessee, Alabama, Georgia, North Carolina, and South Carolina) require “proof of sex reassignment surgery, court order, and/or amended birth certificate in order to change gender marker” (e, 2016). While not all trans people desire surgical changes to their body, those that do still face the hurdles of cost and insurance coverage. The inability to change the gender marker on documentation created challenges for public policy. The recent US Supreme Court case of *Obergefell v. Hodges* (2015) regarding marriage equality has also affected the trans community. Although the trans

community and the lesbian, gay, bisexual and pansexual communities may have different issues and policy interests, marriage equality has affected all of these communities. As four states do not have clear policy about updating names and gender markers on legal documents (Equality Maps, 2016), there have been some instances in which transgender individuals could only legally marry someone of the same gender identity (Taylor, 2007). An example of this would be a transgender woman legally being allowed to marry a cisgender woman. One view of this marriage would be that a transgender woman and a cisgender woman create a homosexual relationship, as they are both women. However, as several states do not recognize and validate transgender people, this relationship would be viewed by the state as heterosexual, as the gender identity of the transgender spouse is ignored and the state considers this marriage to be between a man and a woman. Prior to *Obergefell v. Hodges* (2015), states that did not allow for lesbian, gay, bisexual and pansexual individuals to marry a member of the same sex, were then legally obligated to allow people who are transgender to marry people who were the “same gender” meaning that a transgender person could marry a cisgender person that matched their gender identity, or another transgender person who was assigned the opposite sex at birth as the sex assigned at birth of their partner (i.e. a trans woman could marry a trans man or a cisgender woman). This became necessary because “it is improbable that states can constitutionally withhold all marriage rights to transsexual people” (Taylor, 2007, p.841). The importance of marital status for trans people is that it often allows for the spouse to have eligibility in their spouse’s health insurance plan (Taylor, 2007), which is incredibly important for people who are transgender. Discrimination against trans people is not

allowing them to marry their life partner could have serious consequences, such as lack of health insurance.

### **Trans Visibility and Fluid Identities**

Although trans people are more visible today with celebrities like Laverne Cox (featured cast member on Netflix's original series *Orange is the New Black*) and Caitlyn Jenner (former Olympian and parent to the Kardashian siblings), the danger of this visibility is also a concern. During a panel discussion titled *Trans In/Justice: A Panel Discussion Among Those at the Front Lines of Trans Justice*, Miss Major Griffin-Gracy (a participant in the Stonewall riots) stated, "right now, all of a sudden, transgender people are now the flavor of the month. And the sad part of that is, all of us are not Laverne Cox, and we're not Janet Mock. There's a world full of us. We're everywhere...If they open their eyes, they will see us"(2014). Here, Miss Major is referring to the "passability" of trans people which is when a transgender person presents in a way in which the majority identifies them as their appropriate gender because of their ability to match societal standards for their gender (see Appendix A). Transphobia triggers hate crimes and violence. Transphobia is seen through the discomfort and fear of transgender individuals. Those individual's ability (or lack of) to pass as the gender they present as can also be met with transphobic acts of discrimination and violence. There are trans individuals who are not concerned with fitting into the established societal norms of the gender they identify as, given that there are trans people who identify outside of the gender binary. As more trans, gender non-conforming, and non binary- identified people come out, the gender binary has evolved to a discussion of a spectrum of gender. Some people do not have a single fixed identity in the spectrum. People who identify as

genderfluid describe their gender identity in a fluid, evolving nature in which they will sometimes identify and feel more on one side of the spectrum and at other times they will identify and feel closer to the other end of the spectrum (or anywhere in between).

### **Trans hate crimes and interaction with police**

With increased awareness and visibility, an increase in violence and hate crimes against trans people has resulted. People who are transgender face an immense threat of violence when they publicly live as their authentic selves. Unfortunately, documentation of this violence has not always been successfully recorded. In the Hate Crimes Prevention Act of 1999, people who are transgender were not explicitly documented as victims of gender-based violence, but sexual orientation-based violence (Suffredini, 2000). It is essential to document hate crimes accurately as it is a point of reference to show who the targeted groups are and who needs more protections. The US Federal Bureau of Investigation's Hate Crime Statistics have started to list the prevalence of crimes perpetrated against people based on their gender identity. This was a result of the Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act of 2009. The *Hate Crime Statistics 2013* was the first uniform crime report of the FBI to include statistics about gender identity-related crimes ("Hate Crime Statistics", 2015). In the Uniform Crime Report for 2014, the FBI reports that 69 crimes were based on someone's transgender identity and 40 crimes were based on gender-nonconformity. Additionally, the US Department of Justice's Bureau of Justice Statistics reports on assaults against transgender inmates. These reports allow for law enforcement and corrections personnel to have a greater understanding of the occurrence of these assaults and show that



transgender and gender nonconforming people are at greater risk for encountering hate crimes.

In addition to the way crimes are categorized, the reasons for arrests are important to examine. The Human Rights Watch reported that transgender women are often harassed by police officers for carrying condoms as evidence of sex work (2012). In a comment to Amnesty International (2005), a transgender woman stated, “the police assume we are on the street to do sex work. Why else would a transgender be on the street? Lots of transgender people are academics and have college degrees, but they are totally ignorant of it.” This attitude of trans women inherently being sex workers not only puts transgender women at greater risk for harassment, but also at greater risk for contracting sexually transmitted disease without the protection of condoms if they do not feel safe carrying them.

The relationship between law enforcement personnel and trans people is crucial for respectful interactions. One recurring issue for transgender interactions with law enforcement is the use of the wrong pronouns or name. In a study focused on trans-Latinas, 65% reported being referred to as male (Woods et al., 2013). Also, in a study by Bettcher et al. 27% of respondents reported that law enforcement repeatedly used the wrong name and pronouns (2010). As a result of this type of behavior, many trans people have a negative view of law enforcement personnel. In the study by Woods et al. on trans-Latinas, 36% stated that they did not report crimes to the police because they believed that the police would not listen, help or believe them (2013). Law enforcement personnel seem to have a general understanding of the transgender community as 95% of respondents in a study of law enforcement stated that they had heard the term transgender

and understood what it meant (Redfern, 2014). In the study, most respondents stated that they would use the name/pronouns requested by the subject instead of using legal names or pronouns connected to documented gender. Although interactions with law enforcement personnel vary, there is hope that these relations will continue to improve as more training and awareness is provided.

Violence and assault is an unfortunate reality in the lives of transgender people. In the Virginia Health Initiative Study, Xavier et al. (2007) found that 83% of victims of sexual assaults did not report these incidents of assault to the police and 70% of victims of physical assaults did not report these to the police. In the study of trans-Latinas, Woods et al. found that only 56% of respondents who had been a victim of a crime had reported these crimes to the police (2013).

The Gay & Lesbian Alliance Against Defamation (GLAAD) has supported the annual transgender Day of Remembrance on November 20, memorializing the murders of people who are transgender worldwide. Although there are many people who are transgender mentioned every year, often they are misgendered in the media or in the reports of their deaths, as a result of their legal documentation not matching their gender identity. The need to document these acts of violence is a testament to the change that needs to happen in public policy nationwide in regard to gender identity hate crime documentation.

In 2015, at least 21 transgender people were killed in the US which is more than any other year on record (HRC, 2015). These fatal acts of violence include shootings, beatings, repeated stabbing, being run over by vehicles, and blunt force trauma (HRC, 2015). This is the very real action of transphobia that transgender people rightfully fear.

In 2014, at least 13 transgender people were murdered in the United States (HRC, 2015). Despite increased contact with the majority through trans-focused media (Orange is the New Black, Transparent, I am Jazz, I am Cait etc.), there has been an alarming increase in violence towards the trans community. Trans lives are vulnerable not only to harassment and exclusion, but to violent acts like these, which is why further education must happen to ensure the protection and safety of this minority.

### **A criminal justice system with Trans inmates: women in men's prisons**

Transgender offenders are a vulnerable group. They often are at increased risk for assault in correctional facilities. There is a history of trans people being housed in a facility that does not correspond to their gender identity. For example, CeCe McDonald is a trans woman who was housed in a men's correctional institution (Molloy, 2014). This was not appropriate for her gender identity and put her at greater risk for assault. In 1994 the U.S. Supreme Court decided in *Farmer vs. Brennan* that corrections personnel should not be indifferent to the risks posed to transgender inmates and that being indifferent violates the Eighth Amendment, which prohibits cruel and unusual punishment. In response to housing discrepancies, the Los Angeles Police Department opened an area of the women's jail that held beds specifically for transgender people (Quinones, 2012). Isolating an area specifically for transgender people is supported in a survey of law enforcement personnel. When asked what corrections personnel should do in the scenario of a transgender person being arrested 47% of respondents "believed the transgender individual should be housed in a jail in an isolation unit away from other arrestees" (Redfern, p.6, 2014).

Not only are transgender inmates concerned with appropriate placement, but also safety is a primary concern when discussing trans inmates. The validity of trans offenders' gender has been called into question by corrections staff. In a survey of Pennsylvania's prison systems, Emmer et al. found that 49.2% of transgender respondents reported being laughed at during the search process (2011). Additionally, 45.8% reported being called names and 33.9% reported being groped or felt up. Trans inmates are often the victims of physical and sexual assault as a vulnerable minority group. In a national survey of discrimination against the transgender community, 16% of former offenders responded that they had been physically assaulted in jail or prison and 15% reported that they had been sexually assaulted (Grant et al., 2011). The Prison Rape Elimination Act of 2003 (PREA) has some standards on how to minimize these violent assaults against trans inmates. These standards include "How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents" (28 C.F.R. § 115.331). Standards for searching are also mentioned. Stating "the facility shall not search or physically examine a transgender or intersex resident for the sole purpose of determining the resident's genital status. If the resident's genital status is unknown, it may be determined during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner." (28 C.F.R. § 115.315). In terms of housing, PREA has several standards as to appropriate placement.

(c) Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor shall agencies consider lesbian, gay,

bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive.

(d) In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether the placement would present management or security problems.

(e) Placement and programming assignments for each transgender or intersex resident shall be reassessed at least twice each year to review any threats to safety experienced by the resident.

(f) A transgender or intersex resident's own views with respect to his or her own safety shall be given serious consideration.

(g) Transgender and intersex residents shall be given the opportunity to shower separately from other residents

(28 C.F.R. § 115.342)

These standards give hope that trans people will experience reduced encounters that lead to discrimination while under state or federal custody.

## CONCLUSION

### **The importance of examining, and stopping, discrimination**

There are some serious effects that the outlined discrimination has on the wellbeing of trans individuals. The stigma surrounding trans individuals, especially trans women of color, puts them at a higher rate of unemployment. Many states have laws that protect public employees, but there are 30 states that currently do not offer any

protections against workplace discrimination for trans employees outside of the public sector (Equality Maps, 2016). NCTE reports that more than one out of four trans people have experienced unemployment due to discrimination and three out of four have experienced workplace discrimination (NCTE, 2012). As a means to survive, some desperate trans women turn to sex work. Not only is the issue of sex work related to income, but also housing. In NCTE's report, when asked if the participant "had sex with people to sleep in their bed/ at their homes or to pay rent" 38% of Black participants admitted to this statement and 27% of Latina participants admitted to this statement (NCTE, 2012).

The effects do not stop at sex work however, as sex work is not only physically dangerous in nature, but also the risk of sexually transmitted disease is more likely. Those who participated in sex work were more than 25 times more likely to be HIV-positive (15.32%) compared to the general population (0.6%) (NCTE, 2012). People who are transgender are four times more likely to test positive for Human Immunodeficiency Virus (HIV), and need to be treated for this infection in a timely manner (Grant et al., 2011). HIV is a deadly disease if left untreated. In the transgender community, especially among transgender woman of color, this disease is extremely prevalent (Sevelius, Patouhas, Keatley, and Johnson, 2013). Not only are the statistics high for the number of HIV-positive transgender women, but also there is a serious lack of HIV testing (Sevelius, Patouhas, Keatley, and Johnson, 2013). The majority of LGBTQ focused HIV testing sites serve gay men, and these are not as welcoming and affirming to transgender women (Sevelius, Patouhas, Keatley, and Johnson, 2013). Transgender women have experienced discrimination when they received HIV testing, as they are classified as men

who sleep with men, rather than affirming their true gender identity (Sevelius, Patouhas, Keatley, and Johnson, 2013). Unfortunately, in the LGBTQ community sexual orientation can be better acknowledged and viewed as of higher importance than gender. Although it may seem progressive for these groups to accept anyone regardless of their sexual orientation or sexual behaviors, it is doing a disservice to these women by erasing their gender because of the assumed gay (and male) identity of all participants.

In addition to HIV, the life challenges presented to people who are transgender create a higher risk for them to abuse drugs and alcohol (Sevelius, Patouhas, Keatley, and Johnson, 2013). People who are transgender who seek access to treatment are faced with the frustration of finding a culturally competent program. Unfortunately, the majority of the time these programs are separated by gender, which can add an additional layer of discomfort and alienation (Sevelius, Patouhas, Keatley, and Johnson, 2013). It is clear that people who are transgender need more resources and individualized support that address trans related issues in a culturally competent manner.

The very real mental toll that discrimination takes on the trans community is putting them in serious danger. In addition to the risk of deadly disease and the risk of violence, NCTE reported that 41% of transgender people have attempted suicide compared to the 1.6% in the general population (Grant et al., 2012). The incidence of suicide is greater in communities of color as 45% of black transgender people have reported attempting suicide and 44% of Latino trans individuals have attempted suicide (Grant et al., 2012). This is one of the very grave results of the discrimination trans people face. Fifty-seven percent of trans people whose families rejected them (not wanting to see them or talk with them) had attempted suicide. Sixty percent of trans

people who experienced refusal of treatment by a doctor or healthcare provider attempted suicide. Another correlation with attempted suicide was experience of homelessness; seventy percent of trans people who had been homeless at sometime in their life had also attempted suicide (NCTE, “New Analysis Released on Suicide Among Trans and Gender Nonconforming People”, 2014). The American Foundation for Suicide Prevention reported that in 2014, although there is no full count of attempted suicides in the United States, 494,169 transgender and cisgender people were hospitalized for self-inflicted harm (AFSP, 2016). They also state that 42,773 Americans die from suicide each year (AFSP, 2016). This is a serious problem nationwide as suicide is the 10th leading cause of death in the United States (AFSP, 2016). The transgender community exhibits alarmingly high statistics in the number of attempted suicides as a result of the discrimination they face. In addition to the mental health needs that trans people may require for a gender dysphoria diagnosis, depression and suicidal ideation are mental health care needs that must also be met.

### **Trans in America: Next Steps**

There are many “next steps” for the transgender community; establishing insurance requirements to cover trans-related healthcare, inclusive sex and gender education in the K-12 setting, employment non-discrimination legislation, access to gender-affirming facilities (i.e. restrooms, changing rooms, prisons, locker rooms etc.) that match the individual’s gender, the list is long and there is a lot of work to do. However, each individual can start making daily changes to reduce the negative impact of discrimination towards transgender people. Supporting organizations such as Trans



Lifeline (a hotline for trans people suffering from thoughts of suicide) can continue to provide trans individuals with the support they need. For those in hiring or management positions, fighting the stigma associated with sex work and providing equal employment opportunities to trans applicants is an additional solution. For healthcare providers, providing inclusive healthcare and screening for sexually transmitted disease could help save the lives of vulnerable trans people. Even the simple act of making sure to know someone's correct pronouns and using them respectfully can be an act of change.

It is not safe to be queer in America. It is not safe to be trans in America. These statements are even more apparent following the devastating attack in Orlando, Florida at Pulse, a gay bar and nightclub during "Latin night" on June 12, 2016 (Zambelich, 2016). That night, 49 people were killed and 59 people were injured. The lives of those killed were mourned during pride celebrations throughout June, a time when LGBTQ people hold pride parades around the nation to promote policy change and to recognize the progress since the days of the Stonewall riots. Unfortunately, the Orlando attack painfully illustrates that we still have plenty more work to do. Harsh discrimination and hate crimes are still challenges that the LGBT community face, especially queer and trans people of color.

With public attention on the safety of queer and trans people after the Orlando shooting, policies that condone or encourage hate and violence should be examined. There are many ways as a nation we can make changes to create a safer space for trans and queer people, especially trans and queer people of color. Meaningful reforms in public policy, education, healthcare, public accommodations, and the justice system can all be made that include the needs and safety of transgender people. As the United States

becomes increasingly aware of the hate and violence the LGBTQ community regularly experiences, the promises of “Life, Liberty and the pursuit of Happiness” should be extended to include transgender people being able to live authentically and without fear of discrimination or harm.

**REFERENCES**

- About Hate Crime Statistics. (2015). Retrieved May 26, 2016, from <https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2014/resource-pages/about-hate-crime>
- American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders* (5th ed.). Arlington, VA: American Psychiatric Publishing.
- Ball, A. L. (2015, November 5). In All-Gender Restrooms, the Signs Reflect the Times. Retrieved May 30, 2016, from [http://www.nytimes.com/2015/11/08/style/transgender-restroom-all-gender.html?\\_r=0](http://www.nytimes.com/2015/11/08/style/transgender-restroom-all-gender.html?_r=0)
- Blinder, A., Pérez-peña, R., & Lichtblau, E. (2016). Countersuits Over North Carolina's Bias Law. Retrieved June 06, 2016, from [http://www.nytimes.com/2016/05/10/us/north-carolina-governor-sues-justice-department-over-bias-law.html?\\_r=0](http://www.nytimes.com/2016/05/10/us/north-carolina-governor-sues-justice-department-over-bias-law.html?_r=0)
- Bauer, G., Hammond, R., Travers, R., Kaay, M., Hohenadel, K., & Boyce, M. (2009). "I Don't Think This Is Theoretical; This Is Our Lives": How Erasure Impacts Health Care for Transgender People. *Journal of the Association of Nurses in AIDS Care*, 20(5), 348-361.
- Cha, A. E. (2014). Ban lifted on Medicare coverage for sex change surgery. Retrieved June 06, 2016, from [https://www.washingtonpost.com/national/health-science/ban-lifted-on-medicare-coverage-for-sex-change-surgery/2014/05/30/28bcd122-e818-11e3-a86b-362fd5443d19\\_story.html](https://www.washingtonpost.com/national/health-science/ban-lifted-on-medicare-coverage-for-sex-change-surgery/2014/05/30/28bcd122-e818-11e3-a86b-362fd5443d19_story.html)
- Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq (1964).
- Coleman, E., Bockting, W., Botzer, M., Cohen-Kettenis, P., DeCuypere, G., Feldman, J.,... Zucker, K. (2012). Standards of care for the health of transsexual, transgender, and gender-nonconforming people, Version 7. *International Journal of Transgenderism*, 13, 165–232
- Colvin, R. (2007). The Rise of Transgender-Inclusive Laws: How Well Are Municipalities Implementing Supportive Nondiscrimination Public Employment Policies? *Review of Public Personnel Administration*, 27(4), 336-360.
- Dietert, M., & Dentice, D. (2009). Gender Identity Issues and Workplace Discrimination: The transgender Experience. *Journal of Workplace Rights*, 14(1), 121-140.
- Employment discrimination and transgender people. (2014). National Center for transgender Equality.

- Employment Non-Discrimination Act of 2013, S. 815, 113th Cong. (2013-2014).
- Epidemic. (2016). In Merriam-Webster's dictionary (web). Springfield, MA: Merriam-Webster.
- Equality Maps. (n.d.) Retrieved July 13, 2016, from <http://www.lgbtmap.org/equality-maps>
- Exec. Order No. 11246, 3 C.F.R. 339 (1965).
- Exec. Order No. 11472, 3 C.F.R. 792 (1969).
- Exec. Order No. 13762, 3 C.F.R. (2014).
- Farnel, M. (2014). Kickstarting trans: The crowdfunding of gender/sexual reassignment surgeries. *New Media & Society*, 17(2), 215-230.
- Flores, A. R., Herman, J. L., Gates, G. J., & Brown, T. N. (2016). How many adults identify as transgender in the United States.
- Grant, J. M., Mottet, L.A., Tanis, J., Harrison, J., Herman, J. L., & Keisling, M. (2011). Injustice at every turn: A report of the national transgender discrimination survey. Washington: National Center for transgender Equality and National Gay and Lesbian Task Force.
- Grant, J. M., Mottet, L.A., Tanis, J., Harrison, J., Herman, J. L., & Keisling, M. (2012). *National Transgender Discrimination Survey Report on health and health care*. Washington: National Center for transgender Equality and National Gay and Lesbian Task Force.
- Haas, A. P., Rodgers, P. L., & Herman, J. L. (2014). Suicide Attempts among Transgender and Gender Non-Conforming Adults FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY (Rep.). Retrieved June 6, 2016, from <http://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf>
- Harris, B.C. (2015). Likely Transgender Individuals in U.S. Federal Administrative Records and the 2010 Census (Working Paper No. 2015-03). Retrieved from U.S. Census Bureau website:  
[https://www.census.gov/srd/carra/15\\_03\\_Likely\\_Transgender\\_Individuals\\_in\\_ARs\\_and\\_2010Census.pdf](https://www.census.gov/srd/carra/15_03_Likely_Transgender_Individuals_in_ARs_and_2010Census.pdf)
- Herman, J. L. (2013). Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives. *Journal of Public Management & Social Policy*, 65-80.
- HRC. (n.d.). Congressional Scorecard for the 112th Congress.

HRC. (n.d.). Congressional Scorecard for the 113th Congress.

Irwig, M. S. (2016). Transgender Care By Endocrinologists In The United States. *Endocrine Practice*.

Kohli, S. (2016). This school is opening the first gender-neutral bathroom in Los Angeles Unified. Retrieved May 30, 2016, from <http://www.latimes.com/local/education/la-me-edu-gender-neutral-bathroom-20160413-snap-htmlstory.html>

Kuhn, R. (2015). VII Transitions- Recognizing an Identity Inclusive Theory of Sex-Based Discrimination. *Santa Clara Law Review*, 54(4), 965.

Kurzweil, R. C. (2014). "Justice is What Love Looks Like in Public"- How the Affordable Care Act Falls Short on Transgender Health Care Access. *Washington and Lee Journal of Civil Rights and Social Justice*, 21(1), 196.

Lee, J. (2012). Lost in Transition: The Challenges of Remediating Transgender Employment Discrimination Under Title VII. *Harvard Journal of Law and Gender*, 35(2).

Miller, H. (2016). White House Makes History; Appoints First Transgender Woman as LGBT Liaison. Retrieved from <http://www.hrc.org/blog/white-house-makes-history-appoints-first-transgender-woman-as-lgbt-liaison>

Molloy, P. M. (2014). CeCe McDonald: Rebuilding Her Life After 19 Months in Prison. Retrieved June 30, 2016, from <http://www.advocate.com/politics/transgender/2014/03/03/cece-mcdonald-rebuilding-her-life-after-19-months-prison>

NCTE. (2014). New Analysis Released on Suicide Among Trans and Gender Nonconforming People [Web log post]. Retrieved from <http://www.transequality.org/blog/new-analysis-released-on-suicide-among-trans-and-gender-nonconforming-people>

NCTE. (2015). State Action Center. Retrieved July 12, 2016, from <http://www.transequality.org/action-center#HI HB 2181>

Obergefell v. Hodges, 576 U. S. 14–556 (2015).

Obama Administration Advancements on Behalf of LGBT Americans (2015). Retrieved December 29, 2015, from <http://www.hrc.org/resources/obama-administration-policy-legislative-and-other-advancements-on-behalf-of>

- Peitzmeier, S. M., Khullar, K., Reisner, S. L., & Potter, J. (2014). Pap Test Use Is Lower Among Female-to-Male Patients Than Non-Transgender Women. *American Journal of Preventive Medicine*, 47(6), 808-812.
- Rachlin, K., Green, J., & Lombardi, E. (2008). Utilization of Health Care Among Female-to-Male Transgender Individuals in the United States. *Journal of Homosexuality*, 54(3), 243-258.
- Rondahl, G. (2009). Students' Inadequate Knowledge about Lesbian, Gay, Bisexual and Transgender Persons. *International Journal of Nursing Education Scholarship*, 6(1).
- Rudin, J., Ruane, S., Ross, L., Farro, A., & Billing, T. (2014). Hostile territory: Employers' unwillingness to accommodate transgender employees. *Equality, Diversity and Inclusion: An International Journal Equal Div and Incl: An Int J*, 33(8), 721-734.
- S.815 - 113th Congress (2013-2014): Employment Non-Discrimination Act of 2013. (n.d.). Retrieved June 06, 2016, from <https://www.congress.gov/bill/113th-congress/senate-bill/815>
- Sanchez, N. F., Sanchez, J. P., & Danoff, A. (2009). Health Care Utilization, Barriers to Care, and Hormone Usage Among Male-to-Female Transgender Persons in New York City. *Am J Public Health American Journal of Public Health*, 99(4), 713-719.
- Sevelius, J., Patouhas, E., Keatley, J., & Johnson, M. (2013). Barriers and Facilitators to Engagement and Retention in Care among Transgender Women Living with Human Immunodeficiency Virus. *Annals of Behavioral Medicine Ann. Behav. Med.*, 47, 5-16.
- Suffredini, K. (2000). Which bodies count when they are bashed?: An argument for the inclusion of transgendered individuals in the Hate Crimes Prevention Act of 1999. *Boston College Third World Law Journal*, 20(2), 447-471.
- Taylor, J. (2007). transgender Identities and Public Policy in the United States: The Relevance for Public Administration. *Administration & Society*, 39(7), 833-856.
- Transgender Day of Remembrance #TDOR - November 20. (2015). Retrieved June 14, 2015, from <http://www.glaad.org/tdor>
- UCR Hate Crime, 2014. (2015). Hate Crime Statistics, 2014. Retrieved May 27, 2016, from [https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2014/topic-pages/incidentsandoffenses\\_final](https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2014/topic-pages/incidentsandoffenses_final)

- Unger, C. A. (2014). Care of the transgender patient: The role of the gynecologist. *American Journal of Obstetrics and Gynecology*, 210(1), 16-26.
- Vitulli, E. (2010). A Defining Moment in Civil Rights History? The Employment Non-Discrimination Act, Trans-Inclusion, and Homonormativity. *Sexuality Research and Social Policy*, 155-167.
- Zambelich, A. (2016). 3 Hours In Orlando: Piecing Together An Attack And Its Aftermath. Retrieved June 30, 2016, from <http://www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update>

**APPENDIX A****Glossary of Terms and Definitions****Acronyms and Abbreviations**

AFAB	assigned female at birth
AMAB	assigned male at birth
FTM	female to male
GNC	gender non-conforming
LGBTQ	Lesbian, Gay, Bisexual, Trans, Queer
MTF	male to female

**Definitions**

Cisgender: According to the Oxford (2015) the term “cisgender” is an adjective that means “denoting or relating to a person whose sense of personal identity and gender corresponds with their birth sex.” In this paper the word “cisgender” is used to mean the personal identity corresponding with the individual's assigned sex at birth.

Cissexism: According to Oxford (2015) the term “cissexism” is a noun that means “Prejudice or discrimination against transgender people”. This paper utilizes the same meaning.

Come out: According to Oxford (2015) the term “come out” is a verb that means “(Of a fact) emerge; become known”. In this paper the word “come out” is used to mean the action of disclosing one’s gender identity.

gender-affirming surgery: According to TSER (2015) the term “gender-affirming surgery” refers to “surgical alteration, and is only one part of some trans people’s transition. Only the minority of transgender people choose to and can afford to have



genital surgery.” This paper utilizes the same meaning and also uses the term genital reconstruction surgery using the same meaning.

Gender dysphoria: According to Oxford (2015) the term “gender dysphoria” is a medical noun that means “The condition of feeling one’s emotional and psychological identity as male or female to be opposite to one’s biological sex.” In this paper the terms utilizes the same meaning the exception of “assigned sex at birth” substituting “biological sex”.

Gender expression: According to the HRC (2015) the term “gender expression” means the “external appearance of one's gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.” This paper utilizes the same meaning.

Gender identity: According to the HRC (2015) the term “gender identity” means “one's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.” This paper utilizes the same definition.

Non-binary: According to TSER (2015) the term “non-binary” is an adjective that means “Preferred umbrella term for all genders other than female/male or woman/man. Not all non-binary people identify as trans and not all trans people identify as non-binary.” This paper utilizes the same meaning.

Passing: According to TSER (2015) the term “passing” means “Being perceived by

others as a particular identity/gender or cisgender regardless how the individual in question identifies, e.g. passing as straight, passing as a cis woman, passing as a youth. This term has become controversial as “passing” can imply that one is not genuinely what they are passing as.” This paper utilizes the same meaning.

Transgender: According to the HRC (2015) the term “transgender” is “an umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.” This paper utilizes the same meaning.

Transphobia: According to Oxford (2015) the term “transgender” is a noun that means “Intense dislike of or prejudice against transsexual or transgender people”. This paper utilizes the same meaning.