

EQUALITY AND EQUITY FOR TRANS, NONBINARY, AND GENDER NONCONFORMING PEOPLE

THE PROBLEM

Transgender, nonbinary, and gender nonconforming people uniquely and disproportionately experience a host of social, health, and economic ills, including violence, criminalization, discrimination, lack of health-care access, poverty, homelessness, and many others.¹ Because of high levels of employment and education discrimination as well as difficulty in accessing identity documents that accurately reflect their gender identity, accessing the formal economy is difficult. Trans, nonbinary, and gender nonconforming people are disproportionately unemployed and/or must resort to underground economy work.² This includes practices such as sex work. The criminalization of this type of work along with frequent discriminatory policing of survival crimes, such as sleeping outside, loitering, and fare evasion, has led to high incarceration rates and police violence.³ Trans, nonbinary, and gender nonconforming people also experience high rates of addiction and mental health issues.⁴ Because of how racism and sexism intersect with transphobia, trans women of color are the most vulnerable members of the community across these metrics, especially Black trans women.

One of the key reasons for these issues is a lack of clear and agreed-upon legal and policy definitions that acknowledge trans people's existence and unique needs, ban discrimination, and allow these communities to access correct municipal, state, and federal identity documents. These are required for finding employment, finding housing, accessing public services, and being housed in correct sex-segregated facilities, such as homeless shelters and jails.

POLICY ISSUES

How and why gender matters is an important question for policy-makers. Gender's current, narrow presence as part of identity documentation is one key cause of real lived experiences of violence, discrimination, poverty, and the lack of legal recourse for many of these issues.

IDENTITY DOCUMENTATION

Having identity documentation that accurately reflects one's gender identity is a basic human right. It is worth noting that for true equity and positive outcomes for trans and nonbinary communities, cultural shifts must accompany policy shifts. Policymakers must recognize that there is pervasive anti-trans discrimination and transphobia across the US, as well as a lack of trans people in decision-making roles, which makes this community vulnerable, with many needs to be addressed through policy change. Acknowledging identity is one of many steps to validate transgender people's existence and begin to bring them further away from the margins of society.⁵

In late 2018, the Department of Health and Human Services (HHS) began efforts to restrict federal agencies' legal definition of gender. Under these proposed HHS guidelines, gender definition would be restricted to what was assigned at birth based on perceived sexual anatomy, or, in the case of disputes, based on genetic testing.⁶ This change in legal definition of gender would likely worsen trans, nonbinary, and gender nonconforming people's ability to keep themselves safe while accessing schools, healthcare, federally funded programs, and sex-segregated institutions. These changes are not only an attack on trans communities but also profoundly incorrect science.⁷

NONDISCRIMINATION

Trans, nonbinary, and gender nonconforming people already face significant discrimination, which the HHS memo exacerbates. For example, the HHS memo is the latest attack in an ongoing, longtime struggle against rampant discrimination in the pursuit for health-care access.⁸ Specifically, it could impact trans people's ability to get needed gender-affirming medical treatments covered by insurance, including treatment routinely covered for cisgender people.⁹ Doctors have expressed serious concerns about this proposal's implications for the future of trans medical care.¹⁰

The memo also has significant potential consequences for schools where narrow definition could impact students' access to locker rooms and bathrooms, a significant issue that has far-reaching impacts on their safety and learning-outcomes.¹¹

In response, localities can pass anti-discrimination laws and ensure that requirements for changing sex classification on documents—including birth certificates, municipal identification, and licenses—are based on self-identification and not proof of medical treatment. Cities and counties can create an internal transgender issues workgroup tasked with oversight of city hiring practices, workplace experience for trans and gender nonconforming employees, and internal city policies and investments.

IMMIGRATION

Trans and nonbinary undocumented immigrants face unique challenges when seeking asylum and refuge in the U.S., including disproportionately high levels of abuse, harassment, and sexual assault in immigration detention centers.¹² Currently, the main recourse by detention centers is to place known trans immigrants into solitary confinement; however 10 or more days in solitary confinement is considered a form of torture by psychological experts.¹³ Local governments can take steps to deny access to local facilities like county jails to ICE enforcers, limit or end data sharing with federal immigration enforcers, and pass other “sanctuary city” laws to protect the rights of undocumented immigrants.¹⁴

CITY EXAMPLES: Just this fall, **New York City** became the fifth place in the US to offer gender neutral identification as a third option for birth certificates.¹⁵ The City also has a human rights ordinance that prohibits discrimination on the basis of gender, including trans people.^{16,17} In 2014, the city banned the use of condoms as evidence of sex work,¹⁸ a starting point that activists continue to build on as they take further action for meaningful decriminalization.¹⁹ In 2016, the **Minneapolis City Council** passed a strong resolution in support of the transgender community,²⁰ and in 2017 they established the Transgender Equity Council. Minneapolis hosted its fifth annual Trans Equity Summit focusing on Access to Health and Wellness and including a trans-specific Career and Wellness Fair.²¹ The city also established a police policy protecting transgender and gender nonconforming people while interacting with police officers, and while in custody.²² In 2016, Minneapolis designated funding in the city budget to construct gender-neutral restrooms for both the public and employees in all city-owned facilities including police stations.²³ **Philadelphia** has a strong and broad non-discrimination policy²⁴ that covers housing, employment, and public accommodations, which includes restrooms, and requires all single-occupancy public restrooms to

be gender neutral. In 2018, **Eau Claire** became the third city in Wisconsin to ban conversion therapy.²⁵

School board members can take action to create an environment that is as gender-neutral as possible and supportive of students' gender identities and expressions, as well as work to protect students from harassment and bullying.²⁶ School boards can also create guidelines and policies that respect students' self-identified gender and name. For instance, **Trans United** worked with trans and ally students of **Frederick, MD**, to draft, organize around, and pass one of the most comprehensive pro-trans school policies in the country. The policy ensures all trans and nonbinary students in Frederick schools are affirmed, can participate in activities and use facilities appropriate for their gender, and that there are clear disciplinary guidelines for any staff or student who targets trans kids or uses transphobic slurs.²⁷

Other policy changes that have disproportionate positive impact on trans and nonbinary people's lives include sex work decriminalization, such as the bill currently being considered in Washington, D.C.;²⁸ decriminalization of HIV, such as the measure in California;²⁹ as well as policies that provide affordable/accessible housing, healthcare, and food assistance.³⁰

VIOLENCE

Violence, especially against trans women of color, is rampant in communities across the U.S. Hate crimes legislation is a controversial method for addressing this violence, with trans people of color rightfully pointing out that such laws can be used to increase incarceration and make the punitive system harsher, rather than making communities safer.³¹ Instead, supporting anti-violence community initiatives, public education, and providing for the baseline human and community needs that keep trans people housed, employed, etc. are strategies for addressing violence against trans and nonbinary people.

LANDSCAPE AND RESOURCES

The **ACLU** has a helpful Know Your Rights resource for lawmakers and organizations.³² **Trans United** partners with visionary transgender leaders and organizations to build the collective capacity of the trans community and to improve the lives of transgender people.³³ **Lambda Legal** has extensive resources for transgender communities.³⁴ **GLSEN** has several model policies for school districts. Finally, to learn more about policies and gender discrimination in your state, you can visit the **Movement Advancement Project's** equality map.³⁶

Co-authored by Trans United

