



# Blueprint for Equality:

A Transgender Federal Agenda for the Next  
Presidential Administration and Congress

OCTOBER 2016



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# INTRODUCTION



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# INTRODUCTION

It's hard to believe how much has been accomplished in twelve years. When the National Center for Transgender Equality (NCTE) was founded in 2003, transgender people barely had a voice in the Washington offices where major federal policy decisions take place. Now we're at every relevant meeting, and our impact is felt at almost every table where our issues are discussed. Working in collaboration with our many allies, leveraging our power by working in coalitions on every issue, NCTE has been able to advance an incredibly full agenda despite our small size.

This updated Blueprint for Equality represents a new stage in our movement for transgender equality through federal policy change. We present here another ambitious agenda for the next four years, using strategies we've shown to be effective and relationships we've built with many advocates and federal agencies.

We have also expanded the agenda to include additional important issues that, while not unique to transgender people, affect trans people disproportionately. NCTE's theory of change includes the belief that we must work in concert with all communities who face discrimination, violence, or limitations on opportunities because of race, nationality, class, religion, ability, and other dimensions of identity. In addition, issues of economic justice and transgender equality are inseparable. Policy changes focused only on our identities as trans people will not be enough to end disproportionate poverty among trans people. We must also join with others working to challenge economic inequality itself and ensure that people of all backgrounds have a real opportunity to participate and succeed in American life. We need an America that values everyone based on the content of their character and truly provides equal opportunity to all.

## OPENING DOORS FOR TRANS EQUALITY THROUGHOUT THE FEDERAL GOVERNMENT

In contrast to the hostile environment we faced a decade ago, NCTE has been able to work with a federal government that acknowledges the existence of transgender people or our policy concerns. Agencies across the entire federal government has used its authority to enforce federal sex discrimination laws to protect transgender people—including in jobs, education, housing, and health care—and have been investigating and resolving complaints and standing up for transgender people in the courts. A huge number of employers with federal government contracts are now covered by explicit LGBT employment protections. Updating gender in most federal document and record changes has become much easier. Arbitrary transgender health exclusions have been eliminated in many federal health programs. Nondiscrimination and training requirements have been instituted for many key programs conducted or funded by the federal government. The rights of transgender people are a regular part of both domestic policy discussions as well as US human rights policy abroad. This is just a small sampling of the doors we've helped open, working in coalition with our allies, to prepare for the next phase of policy change. NCTE is prepared to use our place at the federal policy table to assertively and smartly represent transgender people and our policy needs throughout the federal government during the next administration and into the future.

## HOW CAN FEDERAL POLICY CHANGE IMPACT TRANSGENDER LIVES?

Given the pervasive barriers to opportunity, justice, and well-being for transgender people today, change must happen on many levels. It must happen in providing help and support for individuals in our communities who are most in need. It must happen in individual conversations with our families, coworkers, and neighbors. It must happen in statehouses and city councils, courtrooms, voting booths, places of worship, and in the streets. The federal government can play an important role in eliminating the structural and systemic barriers that face transgender people and other marginalized communities. Federal policy touches all our lives, whether through the ID documents we carry, safety-net programs we depend on, or ability to get recourse when we've been mistreated. NCTE actively advocates with and educates the dozens of federal agencies that determine the federal policies that impacts trans lives.

In 2011, the release of the National Transgender Discrimination Survey quantified on a national level for the first time what we have always known—trans people face disrespect, discrimination, and violence in all areas of life. This unprecedented national data set played a critical role in many policy advances. In 2015, NCTE conducted a follow-up survey, now called the US Trans Survey to continue these successes into the future. Results from the US Transgender Survey will be published later in 2016.

## AN EVOLVING BLUEPRINT FOR THE NEXT PHASE OF TRANSGENDER FEDERAL POLICY SUCCESS

In 2009, NCTE released our first agenda for federal policy advancement for transgender people and in 2012 and 2015, we issued expanded versions. We have used these blueprints to educate policymakers and to focus our work and the work of our allies. Over time, however, we have identified additional policies that need to be addressed, as well as policies that have been successfully implemented and no longer need to be listed. Our ever-growing policy expertise has also led us to further refine some of our recommendations. This updated document represents a comprehensive and up-to-date review of federal policies that can impact trans people, providing a blueprint for the next phase of federal policy change. We now also list the federal policy advances we have collectively made so that we may all celebrate the forward movement toward transgender equality together.

## WHAT THIS BLUEPRINT MEANS FOR YOU

One goal for this blueprint is to provide trans people and allies with an understanding of the breadth of the transgender federal agenda. As you read, keep your own policy priorities in mind, and think about how some of these changes could impact your life or the lives of your friends and family members. Think about how you can help advocate for positive changes from your own community by advocating for similar policies at the local or state level.

While some of the work needed to advance federal policy requires specific expertise, these policies are advancing in large part because so many transgender people and our allies around the country are educating the public, the media, members of Congress, and even local and state policymakers, who often become federal policymakers. Visit our website at [www.transequality.org](http://www.transequality.org) for ideas on how you can help us make change all over the country.

## CONSIDERATIONS

When reading this blueprint, please keep the following things in mind:

**Scope:** This agenda focuses exclusively on U.S. public policy at the federal level. Many other efforts are equally important to advancing transgender equality, including state and local advocacy, public education, litigation, media advocacy, working with medical, educational, and other institutions, and providing services directly to transgender people and their families. NCTE and many others continue to work in these vital areas, however, these topics are not discussed here.

**Timing:** While some of the goals in this blueprint may take years to achieve, many are readily achievable in the next four years, and NCTE is working every day with our allies to accomplish them.

**Collaboration:** Smart and effective collaboration with a wide array of partners is a foundation of NCTE's work. When we say that "we" hope to achieve a federal policy goal, we include in that statement the work of our amazing and committed allies, inside and outside of the federal government. NCTE wishes to thank our many advocacy partners for their input on this Blueprint, and for their ongoing work with us to achieve justice and equality for all.

**Terminology:** Throughout this document, we use the words transgender and trans interchangeably. In most cases, we mean all people commonly described as transgender or gender nonconforming, including those who have a non-binary gender identity or a non-conforming gender expression. When policies are only relevant for those who transition, that should be clear in the context of the discussion. NCTE believes that all trans people matter and seeks to represent every part of our communities.

**Note:** This was published in October 2016, and the Obama Administration has through January 19, 2017 to pass additional policies. We hope there will be many more.



CHAPTER 1

# ECONOMIC OPPORTUNITY



## ECONOMIC OPPORTUNITY

The 2011 National Transgender Discrimination Survey found that more than one in four transgender adults had lost at least one job due to bias, and more than three-fourths have experienced some form of workplace discrimination.<sup>1</sup> Biased refusal to hire, privacy violations, harassment, and even physical and sexual violence on the job are common occurrences, and experienced at even higher rates by transgender people of color. Many report changing jobs to avoid discrimination or the risk of discrimination. Extreme levels of unemployment and poverty lead one in eight to become involved in underground economies—such as sex and drug work—in order to survive.

While 19 states, D.C., Puerto Rico, and over 250 local jurisdictions, and hundreds of employers have adopted clear laws or policies to prohibit anti-transgender discrimination, half the nation's population still lives without these critical protections in state or local law. And while transgender people face twice the rate of unemployment as the rest of the U.S. workforce,<sup>2</sup> they can also face discrimination in the public jobs programs meant to connect them with job opportunities and/or training.

In recent years, courts and federal agencies have increasingly taken the view that discrimination against transgender people is prohibited by existing laws against sex discrimination.<sup>3</sup> This updated understanding of sex discrimination laws, accepted by the Equal Employment Opportunity Commission in 2012 and by the Attorney General in 2014, has become a powerful tool to combat employment bias. A critical EEOC decision in 2015 also clarified that denying workers access to restrooms consistent with their gender identity constitutes sex discrimination. While protections for transgender people under existing federal law have been challenged in court by some state politicians and anti-LGBT groups, NCTE has and will continue to work to more firmly establish this understanding of the law and the critical protection it can provide. Ultimately, passing a federal law to prohibit gender identity discrimination in the most clear and specific terms is essential to ensuring that employers understand and consistently follow the law, and therefore to decreasing anti-transgender discrimination.

Despite new nondiscrimination protections, many workers—including many federal government workers—are still subject to a uniquely discriminatory and baseless across-the-board exclusion of medically necessary, transition-related care from the health benefits they've earned. These discriminatory exclusions are being increasingly abandoned by large employers; 60% of companies surveyed for the 2016 HRC Corporate Equality Index provide inclusive benefits compared to less than 9% in 2009.<sup>4</sup> The federal government in 2015 prohibited blanket exclusions for transition-related care in federal employee plans, but plans have circumvented this policy by providing extremely limited coverage and maintaining broad exclusions. Thus, more is needed to ensure all workers can access the benefits they've earned.

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1 Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 53. Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force (2011).

2 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 55.

3 See, e.g., *Complainant v. McHugh*, E.E.O.C. App. No. 0120133395 (Apr. 1, 2015); Attorney General Memorandum, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (Dec. 18, 2014); *Macy v. Holder*, E.E.O.C. App. No. 0120120821 (April 20, 2012); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008); *Finkle v. Howard County, Md.*, 12 F.Supp.3d 780 (D.Md. 2014).

4 Human Rights Campaign, *Corporate Equality Index 2015*, at 30 (2015), available at: <http://hrc.org/cei>.



## POLICY ADVANCES

- The Department of Labor adopted regulations making clear that gender identity discrimination is sex discrimination under Executive Order 11246, which prohibits discrimination by federal contractors, and that contractors may not exclude transgender workers from restrooms or maintain transgender exclusions in health plans. (2016)
- The Consumer Financial Protection Board issued a letter stating that the Equal Credit Opportunity Act's sex discrimination provisions protect LGBT people from discrimination by banks and other lenders. (2016)
- The Department of Labor proposed regulations to explicitly prohibit gender identity and sexual orientation discrimination in registered apprenticeship programs and clarify that individuals have the right to use restrooms consistent with their gender identity. (2016)
- The Department of Labor proposed regulations making clear that gender identity discrimination is prohibited sex discrimination in federally funded job centers and employment and training programs. (2016)
- After establishing a formal alliance with NCTE, the Occupational Safety and Health Administration (OSHA) issued guidance to employers on ensuring safe and adequate restroom access for transgender workers. (2015)
- The Department of Labor issued national guidelines to all federally funded job centers and employment and training programs to prevent discrimination against LGBT people, including ensuring respect for every person's gender identity. (2015)
- The Equal Employment Opportunity Commission (EEOC) clarified that workers have the right to use workplace restrooms consistent with their gender identity, in the case *Lusardi v. McHugh*. (2015)
- The Department of Justice filed a landmark lawsuit against Southeastern Oklahoma State University for firing a transgender professor. (2015)
- The Department of Labor issued guidance for all Job Corps program sites to ensure equal opportunity and respectful treatment for transgender youth. (2015)
- The Attorney General issued a memorandum stating that the Justice Department will interpret federal sex discrimination laws to prohibit bias based on gender identity. (2014)
- The EEOC filed several landmark lawsuits against private employers for discrimination against transgender workers. (2014-2016)
- President Obama signed an Executive Order explicitly prohibiting federal contractors and subcontractors from discriminating on the basis of gender identity and sexual orientation. (2014)
- The EEOC made protecting the rights of LGBT workers a top priority in its four-year strategic plan. (2012)

- The EEOC declared that anti-transgender bias is a form of sex discrimination under Title VII of the Civil Rights Act, with the case *Macy v. Holder*. (2012)
- The Federal Aviation Administration (FAA) revised its medical certification procedures for transgender pilots to reflect current medical science and eliminate unnecessary obstacles to certification. (2012, updated 2016)

## POLICY ADVANCES: FEDERAL WORKFORCE

- The Office of Personnel Management (OPM) issued a carrier letter stating that all Federal Employee Health Benefits Plans must no longer contain total exclusions for all transition-related care for federal employees and dependents. (2015)
- OPM issued detailed workplace guidance for federal agencies covering employment issues for transgender employees, including privacy and confidentiality, access to facilities, dress standards, and non-discrimination expectations. (2011, updated 2015)
- President Obama signed an Executive Order explicitly protecting federal employees from discrimination on the basis of gender identity. (2014)
- OPM issued new regulations that make clear all transgender federal employees are protected by sex discrimination laws. (2014)
- Most federal agencies updated their Equal Opportunity Employment (EEO) policies to reflect *Macy v Holder*, which found discrimination against transgender employees to be sex discrimination in violation of Title VII. (2012-2014)
- OPM updated its procedures for personnel records to allow transgender employees to update their name and gender to be consistent with the employee's gender identity. (2011)

## NEEDED POLICY CHANGES

- Congress should pass legislation that would explicitly prohibit discrimination in employment based on gender identity and sexual orientation.
- Congress should raise the national minimum wage to a living wage.
- Congress should pass legislation to secure paid sick and family leave for all workers and their families, regardless of marital status or family structure.\*
- Congress should pass the Ban the Box Act, which would prohibit questions about prior arrests or convictions in employment except in very narrow circumstances.
- Congress should fully fund the Department of Justice's Civil Rights Division and the Equal Employment Opportunity Commission.
- The President should issue an Executive Order prohibiting questions about prior arrests or convictions in applications for all federal employment and federal contractor employment except in very narrow circumstances.

- The Equal Employment Opportunity Commission (EEOC) should issue enforcement guidelines on gender identity and sexual orientation discrimination as sex discrimination under Title VII of the Civil Rights Act of 1964, covering such issues as dress codes, access to sex-segregated facilities, and employee benefits.
- The Department of Justice and the EEOC should aggressively pursue litigation to advance the rights of LGBT workers under federal sex discrimination laws and publicize positive resolutions, including in cases of discrimination in employee benefits.
- Each federal agency that has yet to do so should issue a policy directive stating that it will ensure that agency employees will not be discriminated against on the basis of gender identity and that transgender discrimination claims will be processed according to Title VII procedures.
- US Citizenship and Immigration Services should update the I-9 form to ask only for other surnames used (not first names), and to make this question optional.
- The Occupational Safety and Health Administration (OSHA) should issue a standards interpretation clarifying that employers must provide all workers with full access to sanitary facilities consistent with their gender identity as a matter of health and safety.
- The Occupational Safety and Health Administration (OSHA) should issue a standards interpretation clarifying that employers may designate multi-user restrooms for use by employees of all genders.
- The Office of Personnel Management (OPM) should ensure that all Federal Employee Health Benefits Plans eliminate remaining transgender exclusions and provide all medically necessary transition-related care for federal employees and their dependents.
- OPM should further strengthen its transgender employee guidelines for federal agencies and make clear that they reflect the requirements of equal opportunity laws; to more clearly protect the rights of workers with non-binary gender identities; and to ensure workers can use their chosen name in email addresses, business cards and other daily uses regardless of whether they have a legal name.
- OPM should further update the federal personnel record gender marker policy to allow for certification of gender change by licensed therapists, psychologists, and nurse practitioners.
- The Department of Homeland Security, Department of Justice, and other federal agencies should adopt policies providing for the recognition of transgender law enforcement and security officers on the basis of their gender identity for purposes of gender-specific job duties.
- The Department of Labor should identify, promote and fund best practices for helping transgender people enter or re-enter the workforce.

CHAPTER 2

# HOUSING AND HOMELESSNESS



## HOUSING AND HOMELESSNESS

Shelter is a basic human right, yet transgender people face severe discrimination and hardship in many ways as we pursue suitable housing. Whether it is fair participation in the rental and homebuying market or access to homeless shelters, the pervasive nature of discrimination follows trans people home. When trying to rent or buy a home, one in five transgender people (19%) in the U.S. have been refused a home or apartment and more than one in ten (11%) have been evicted because of their gender identity.<sup>1</sup> While federal authorities agree that the Fair Housing Act's ban on sex discrimination protects transgender people, lack of awareness and legal clarity mean that discrimination persists. Strong, explicit legal protection from gender identity discrimination is essential to securing equal housing opportunities.

Homelessness is also a critical issue for transgender people, with one in five having experienced homelessness at some time in their lives because of discrimination and/or family rejection.<sup>2</sup> As a result, an estimated 20-40% of the more than 1.6 million homeless youth in the United States are LGBT.<sup>3</sup> A ten-year federal plan to prevent and end homelessness has made significant progress but has been limited by the slow economic recovery and inadequate federal, state, and local investments in affordable housing and programs to quickly help people move into permanent housing. Transgender people facing homelessness also face discrimination from or at agencies that should be helping them, with nearly one in three (29%) reporting being turned away from a shelter due to their transgender status and 22% of those who stayed at a shelter reported experiencing sexual assault from staff or other residents.<sup>4</sup> While leading experts on homelessness recommend providing emergency housing consistent with a person's gender identity,<sup>5</sup> 42% of trans people facing homelessness have been forced to stay in a shelter living as the wrong gender.<sup>6</sup> A 2015 survey in four states similarly found that homeless shelters for women routinely refused to admit transgender women.<sup>7</sup> The Department of Housing and Urban Development has issued key regulations that make it clear that this harmful practice is prohibited in federally funded shelters.

**While ending anti-transgender discrimination in housing and shelter is critical, the high rates of homelessness among transgender youth and adults and in the nation as a whole require more far-reaching change. NCTE strongly supports increasing our nation's investment in affordable housing, as well as eliminating barriers to stable housing for people with criminal records and local laws that effectively criminalize homelessness.**

1 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 112-13.

2 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 112.

3 Nico Quintana, Josh Rosenthal, and Jeff Krehely, On the Streets: The Federal Response to Gay and Transgender Homeless Youth, at 6. Washington, DC: Center for American Progress (2010). Available at: <http://www.americanprogress.org/issues/2010/06/pdf/lgbtyouthhomelessness.pdf>.

4 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 116.

5 See, e.g., New York City Division of Adult Services, Procedure No. 06-1-31: Transgender and Intersex Clients (2006); Lisa Mottet and John M. Ohle, Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People, at 11-14. Washington, DC: National Gay and Lesbian Task Force and National Coalition for the Homeless (2003). Available at: <http://thetaskforce.org/downloads/reports/reports/TransitioningOur-Shelters.pdf>.

6 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 118.

7 Caitlin Rooney, Laura E. Durso, and Sharita Gruberg, Discrimination Against Transgender Women Seeking Access to Homeless Shelters (2016). Available at: <https://www.americanprogress.org/issues/lgbt/report/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>.



## POLICY ADVANCES

- The Department of Housing and Urban Development (HUD) issued regulations making clear that HUD-funded homeless shelters and transitional housing programs must admit individuals based on their gender identity. (2016)
- HUD issued key guidance documents aimed at reducing barriers to public and private housing for people with records of arrest or incarceration. (2016)
- HUD issued guidance and best practices documents to homeless shelters and transitional housing programs on welcoming transgender people. (2015, 2016)
- The National LGBTQ Youth Homelessness Prevention Initiative was established by HUD, in cooperation with other federal agencies, which created pilot programs in Houston/Harris County, TX and Cincinnati/Hamilton County, OH to implement cohesive, coordinated plans to address homelessness of LGBTQ youth in these areas, to serve as national models if successful. (2014)
- HUD announced the first federal study of anti-transgender housing discrimination. (2013)
- The HUD, and the Department of Justice (DOJ) filed the government's first transgender Fair Housing Act case in federal court, arguing that the transgender person faced illegal sex discrimination. (2013)
- HUD issued regulation called the Equal Access Rule that bans anti-LGBT bias in all federally funded housing programs. (2012)
- HUD and the Department of Justice (DOJ) filed and ultimately settled the government's first transgender Fair Housing Act case in federal court, arguing that the transgender person faced illegal sex discrimination. (2013)
- HUD issued regulation that bans anti-LGBT bias in all federally funded housing programs. (2012)
- Opening Doors federal homelessness plan and Runaway and Homeless Youth Act grants target help for LGBT homeless youth. (2011-ongoing)
- HUD announced that the Fair Housing Act's sex discrimination provisions protect transgender people. (2010)

## NEEDED POLICY CHANGES

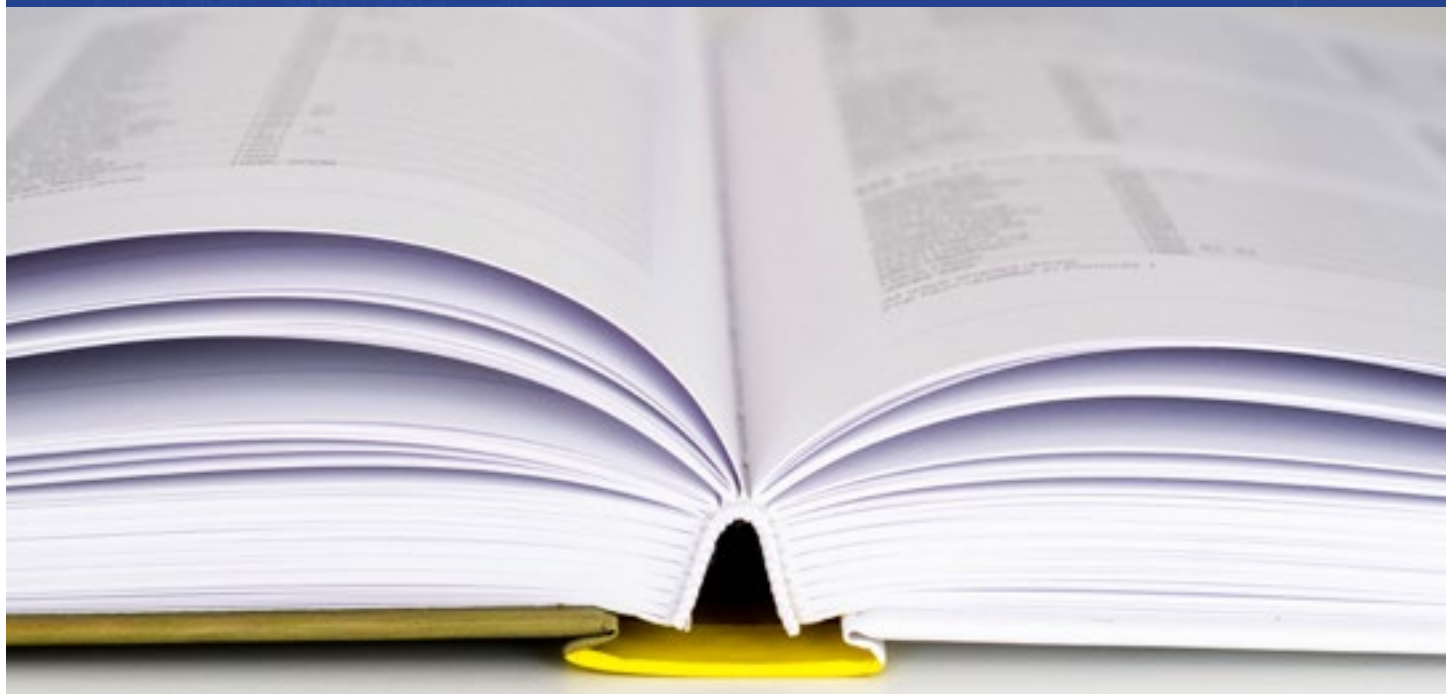
- Congress should pass the legislation that would explicitly prohibit discrimination based on gender identity and sexual orientation in housing and lending.
- Congress should reauthorize and strengthen the Runaway and Homeless Youth Act, including adding a nondiscrimination provision, and fully funding a prevalence and incidence study of runaway and homeless youth, which should include LGBT demographic questions.

- Congress should increase funding for the Department of Housing and Urban Development (HUD) and other agencies to fully implement the Federal Strategic Plan to Prevent and End Homelessness, including expanding the nation's supply of affordable housing.
- HUD should use rulemaking to codify protections for LGBT people under the Fair Housing Act's prohibition on sex discrimination.
- HUD and the Department of Health and Human Services (HHS) should implement a unified homeless data collection system for both youth and adults that includes data on gender identity and sexual orientation.
- HUD and HHS should publish and promote best practices for supporting homeless transgender youth.



CHAPTER 3

# SAFE AND SUPPORTIVE SCHOOLS



## SAFE AND SUPPORTIVE SCHOOLS

Bullying and violence in schools constitute a safety crisis, impacting the health and educational achievements of transgender youth. The National Transgender Discrimination Survey illustrates the alarming extent of the problem: 78% of respondents who were out as transgender or were gender non-conforming while in K-12 school indicated that they had been harassed on the basis of their gender identity or expression, with over one-third (35%) reporting that the harassment escalated to physical assault. The abuse is often so severe that it resulted in almost one-sixth (15%) leaving school to escape.<sup>1</sup> A national survey by GLSEN has found that 80% of transgender youth feel unsafe at school, and those who are able to persevere faced more school discipline, had significantly lower GPAs, were more likely to miss school out of concern for their safety, and were less likely to plan on continuing their education.<sup>2</sup> Perhaps most alarmingly, 51% of NCTE survey respondents who had been bullied reported attempting suicide.<sup>3</sup>

Critically, however, it is not just hostility from peers that threatens equal opportunity for transgender students. Too often, school officials themselves single out these youth by refusing to respect their gender identity and even punishing them for expressing that identity. Rather than focusing on their education, many students struggle for the ability to come to school and be themselves without being punished for wearing clothes or using facilities consistent with who they are, and are often denied opportunities to go on field trips, participate in sports, or even use the same restrooms as other students.

Families and educators across the country have stepped up to support transgender students. Over a dozen states and thousands of individual school districts have trans-supportive policies, and in 2016—at the request of educators across the country, including the National Association of Secondary School Principals—the US Department of Education issued historic guidance on the rights of trans students under Title IX. With growing support for transgender students there has also been a backlash, with some politicians spreading fear and lies about transgender youth. Many state bills have been proposed to ban trans students from restrooms, and one state, North Carolina, passing such a law. As of fall 2016, North Carolina’s House Bill 2 is being challenged in federal court—as is the Department of Education’s trans-friendly guidance.

While bullying and the need to support transgender youth have become a national conversation, much of the real change is happening in local school districts because of the hard work of parents, youth, educators, and equality advocates. These efforts have included adopting strong local policies to support transgender students in key areas such as dress codes, athletic participation and access to school facilities, and other steps to prevent and address bullying. Educators who know transgender youth also know that supporting them is simple and benefits everyone. NCTE has partnered with the Gay, Lesbian & Straight Education Network (GLSEN) to release a Model School District Policy on Transgender and Gender Nonconforming Students.<sup>4</sup> This essential resource provides clear and specific guidance for schools on preventing bullying, protecting student privacy, and ensuring an equal chance to learn. State and local agencies around the country have used the model policy in developing their own policies.

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1 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 36-38.

2 GLSEN, Educational exclusion: Drop out, push out, and school-to-prison pipeline among LGBTQ youth (2016); Kosciw, J. G., Greytak, E. A., Palmer, N. A., & Boesen, M. J., The 2013 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation’s schools (2014).

3 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 45.

4 GLSEN & National Center for Transgender Equality, Model District Policy on Transgender and Gender Nonconforming Students (2016).

## POLICY ADVANCES

- The Department of Justice (DOJ) and Department of Education issued a historic Dear Colleague letter to every public school district on ensuring equal opportunity for transgender students along with a guide to state and local best practices, covering a range of issues from dress codes, student records, confidentiality, sports, and access to facilities. (2016)
- DOJ filed a landmark lawsuit, *United States v. North Carolina*, challenging North Carolina House Bill 2 under Title IX, Title VII of the 1964 Civil Rights Act, and the Violence Against Women Act. (2016)
- DOJ and the Department of Education issued guidance to schools on the use of police officers in schools and the overcriminalization of students. (2016)
- DOJ filed a first-ever court brief arguing that denying a transgender student access to restrooms consistent with their gender identity constitutes sex discrimination under Title IX. (2015)
- The Department of Education issued guidance stating that, under Title IX, transgender students must have the opportunity to participate in single-sex classes and extracurricular activities consistent with their gender identity. (2014)
- The Department of Education issued guidance stating that colleges must strengthen sexual assault policies, and for the first time stating that Title IX protects transgender students. (2014)
- The Department of Education issued guidance addressing racially disproportionate school discipline—though without acknowledging impacts or protections for LGBT students. (2014)
- DOJ and the Department of Education reached landmark Title IX settlements on behalf of transgender students who were not allowed access to facilities or other school opportunities consistent with their gender identity, in violation of Title IX. (2013-16)
- The Department of Education issued a Dear Colleague letter to school districts, stating that Title IX prohibits anti-LGBT bullying based on sex stereotypes. (2010)

## NEEDED POLICY ADVANCES

- Congress should pass the Safe Schools Improvement Act, which would ensure that all schools and districts implement comprehensive and effective anti-bullying and anti-harassment policies that specifically include gender identity and sexual orientation.
- Congress should pass the Student Non-Discrimination Act, which would prohibit discrimination in K-12 public schools on the basis of gender identity and sexual orientation.
- Congress should repeal the Souder Amendment and restore access to federal financial aid to students with prior drug convictions.
- Congress should fully fund the Department of Justice's Civil Rights Division and the Department of Education's Office for Civil Rights.



- Congress should fully fund comprehensive sexuality education and defund ineffective and dangerous abstinence-only programs.\*
- Congress or the Department of Education should mandate that all states provide comprehensive suicide prevention education to all high school students. The mandate should require that the curriculum meets minimum standards, including a discussion of LGBT youth and why they have an increased risk of suicide.
- The President and the Departments of Education and Health and Human Services should continue to devote resources and high-level attention to the problems of bullying, harassment, and peer violence, and should include explicit discussion of transgender youth as a part of those efforts.
- The Department of Education should update Title IX regulations to reflect the law's application to sexual harassment and violence and anti-LGBT discrimination.
- The Departments of Justice and Education should aggressively pursue Title IX complaints and litigation to advance the rights of LGBT students and publicize positive resolutions.
- The Department of Education should enhance the transparency and effectiveness of Title IX enforcement by tracking and reporting data on LGBT-related claims and by providing transgender-inclusive training for all Title IX officers.
- The National Center for Education Statistics should ensure that data collection includes detailed information about bullying, harassment, and other school violence, including whether incidents were motivated by a victim's gender identity or expression.
- The Departments of Education and Health and Human Services should develop new cultural competence and best practice resources for schools focusing on transgender students and preventing their victimization.
- The Department of Health and Human Services should strengthen criteria for its Evidence-Based Teen Pregnancy Prevention Programs list and eliminate inaccurate and ineffective abstinence-only programs.
- Unless and until Congress eliminates the Selective Service System (SSS) or makes it gender neutral, the SSS should work with other federal agencies to update its policies to eliminate confusion and prevent barriers to student aid and other opportunities for transgender people.\*
- The Department of Education should provide guidance for transgender students on completing the Free Application for Federal Student Aid (FAFSA) and should work with schools, the Selective Service System, and the Social Security Administration to ensure applications are not unduly delayed or rejected because of gender documentation issues.

*See Counting Trans People in Federal Surveys for more on youth-focused surveys.*

*See Housing and Homelessness for more on LGBTQ youth homelessness.*

*\* This item is also listed in another section.*

## Attorney General Loretta Lynch's remarks at a press conference announcing the Justice Department's civil rights enforcement action against North Carolina House Bill 2, May 9, 2016

"The North Carolina General Assembly passed House Bill 2 in special session on March 23 of this year. ... In so doing, the legislature and the governor placed North Carolina in direct opposition to federal laws prohibiting discrimination on the basis of sex and gender identity. More to the point, they 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. ...

Today, we are filing a federal civil rights lawsuit against the state of North Carolina, Governor Pat McCrory, the North Carolina Department of Public Safety and the University of North Carolina. We are seeking a court order declaring House Bill 2's restroom restriction impermissibly discriminatory, as well as a statewide bar on its enforcement. ...

This action is about a great deal more than just bathrooms. This is about the dignity and respect we accord our fellow citizens and the laws that we, as a people and as a country, have enacted to protect them – indeed, to protect all of us. And it's about the founding ideals that have led this country – haltingly but inexorably – in the direction of fairness, inclusion and equality for all Americans.

This is not the first time that we have seen discriminatory responses to historic moments of progress for our nation. We saw it in the Jim Crow laws that followed the Emancipation Proclamation. We saw it in fierce and widespread resistance to *Brown v. Board of Education*. And we saw it in the proliferation of state bans on same-sex unions intended to stifle any hope that gay and lesbian Americans might one day be afforded the right to marry. That right, of course, is now recognized as a guarantee embedded in our Constitution, and in the wake of that historic triumph, we have seen bill after bill in state after state taking aim at the LGBT community. Some of these responses reflect a recognizably human fear of the unknown, and a discomfort with the uncertainty of change. But this is not a time to act out of fear. This is a time to summon our national virtues of inclusivity, diversity, compassion and open-mindedness. What we must not do – what we must never do – is turn on our neighbors, our family members, our fellow Americans, for something they cannot control, and deny what makes them human. 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.

Let me speak now to the people of the great state, the beautiful state, my state of North Carolina. You've been told that this law protects vulnerable populations from harm – but that just is not the case. Instead, what this law does is inflict further indignity on a population that has already suffered far more than its fair share. This law provides no benefit to society – all it does is harm innocent Americans.

Instead of turning away from our neighbors, our friends, our colleagues, let us instead learn from our history and avoid repeating the mistakes of our past. Let us reflect on the obvious but often neglected lesson that state-sanctioned discrimination never looks good in hindsight. It was not so very long ago that states, including North Carolina, had signs above restrooms, water fountains and on public accommodations keeping people out based upon a distinction without a difference. We have moved beyond those dark days, but not without pain and suffering and an ongoing fight to keep moving forward. Let us write a different story this time. Let us not act out of fear and misunderstanding, but out of the values of inclusion, diversity and regard for all that make our country great.

Let me also speak directly to the transgender community itself. Some of you have lived freely for decades. Others of you are still wondering how you can possibly live the lives you were born to lead. But no matter how isolated or scared you may feel today, the Department of Justice and the entire Obama Administration wants you to know that we see you; we stand with you; and we will do everything we can to protect you going forward. Please know that history is on your side. This country was founded on a promise of equal rights for all, and we have always managed to move closer to that promise, little by little, one day at a time. It may not be easy – but we'll get there together."

**“We see you;  
we stand with  
you; and we will  
do everything  
we can to  
protect you”**

CHAPTER 4

# ACCESS TO QUALITY HEALTH CARE



## ACCESS TO QUALITY HEALTH CARE

In a groundbreaking 2011 report, the U.S. Institute of Medicine (now known as the National Academy of Medicine) found that transgender people in the United States face serious health disparities and systemic barriers to care. These disparities are particularly acute for transgender people of color. At the same time, transgender people are more likely to be uninsured, to be unable to afford to pay for health care out of pocket, and to delay seeking health care because of cost or fear of discrimination.<sup>1</sup> This report, together with the recognition of LGBT health disparities in federal efforts such as Healthy People 2020, the National Prevention Strategy, represented important steps toward integrating these issues into broader efforts to improve the nation's health and combat all disparities. Still, federal efforts to address the health of transgender people have only just begun.

Discrimination against transgender people seeking health care is an urgent and widespread problem. For example, one-fifth of respondents in the National Transgender Discrimination Survey (NTDS) reported being turned away outright by a health care provider due to bias.<sup>2</sup> Twenty-eight percent (28%) postponed or avoided medical treatment when they were sick or injured and 33% delayed or did not try to get preventive health care because they feared discrimination.<sup>3</sup>

Building the cultural competency of health care providers is critically important to the health of transgender people and is a vital corollary to nondiscrimination protections. Health care providers and support staff must become more knowledgeable about trans people's health care needs and how to best address these needs. They must be able to communicate with trans people respectfully and sensitively, and treat information about a patient's transgender status as confidential. Fifty percent of NTDS respondents reported having to teach providers about their health needs.<sup>4</sup>

Difficulties in accessing health care arise for many transgender people even before they get to a doctor's office or hospital. Despite strides in expanding the number of people in the United States who are able to secure adequate health insurance, plans still frequently exclude coverage of services for a transition-related medical purpose, even when the same or comparable services are routinely covered for other medical indications. These arbitrary exclusions have no scientific basis, create a dangerous gap in access to quality and affordable care for transgender people, and violate federal and state nondiscrimination laws. Federal regulations adopted in 2016—following the lead of many states—aim to sharply limit if not eliminate these practices, but it remains to be seen how quickly and fully insurance carriers will comply.

In its 2011 report, the Institute of Medicine recommended that data on gender identity and sexual orientation be routinely collected in electronic health records and in federally funded health surveys, and that the federal government provide expanded support for health research on transgender people.<sup>5</sup> To adequately understand and meet the health needs of transgender people, systematic research and data collection on trans populations is essential. Until now, the

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1 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 76.

2 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 75.

3 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 76.

4 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 76.

5 IOM, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*, at 299-304 (2011).

absence of even the most basic demographic and health data on transgender people has been a major roadblock to improving health and eliminating disparities for trans people.

## POLICY ADVANCES

- The National Institutes of Health formally designated LGBT people as a health disparity population for purposes of federally-funded research. (2016)
- The Department of Health and Human Services (HHS) issued a proposed regulation requiring that hospitals accepting Medicare and Medicaid adopt LGBT-inclusive nondiscrimination policies and notify patients of these policies. (2016)
- HHS issued a proposed regulation expressly prohibiting discriminations in HHS grant programs, including on the basis of gender identity or sexual orientation.
- The Department of Health and Human Services (HHS) published landmark regulations making clear that discrimination against LGBT and intersex people in health care is prohibited by Section 1557 of the 2010 Affordable Care Act, including: discriminatory transgender exclusions or denials in most private and public health plans sold in the U.S.; denial of health services to trans people simply because they are traditionally associated with one gender; and refusal to respect a patient's gender identity. (2016)
- The Health Resources and Services Administration added the collection of demographic data on gender identity and sexual orientation to the Uniform Data System for Federally Qualified Health Centers. (2016)
- HHS's Medicare Appeals Council issued a ruling making clear that Medicare plans must cover transition-related surgeries on the basis of individual medical need. (2016)
- The Substance Abuse and Mental Health Services Administration (SAMHSA) published a historic report on ending harmful "conversion therapy" and affirming LGBTQ youth. (2015)
- HHS published guidance clarifying that insurance plans may not deny coverage of medically appropriate preventive services simply based on an individual's gender identity, gender assigned at birth, or the gender listed in insurance records. (2015)
- The Office of the National Coordinator for Health Information Technology published regulations required that electronic health record systems provide for the collection of data on gender identity and sexual orientation. (2015)
- The National Institutes of Health established a Sexual & Gender Minority Research Office. (2015)
- Medicare's long-standing exclusion for transition-related surgery was overturned. (2014)
- HHS published LGBT-inclusive National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care. (2014)
- The Department of Health and Human Services (HHS) released an updated, LGBT-inclusive



guide for substance abuse treatment providers. (2013)

- HHS issued regulations prohibiting anti-LGBT bias in state insurance marketplaces. (2012)
- The Joint Commission made LGBT nondiscrimination policies a requirement for hospital accreditation. (2011)
- HHS issued regulations that prohibit discrimination against LGBT people in hospital visitation. (2011)

## NEEDED POLICY CHANGES

- Congress should pass the Health Equity and Accountability Act, which would strengthen federal action to combat health disparities, including those correlated to gender identity and sexual orientation.
- Congress should pass legislation prohibiting deceptive and harmful “conversion therapies” that attempt to change a person’s gender identity or sexual orientation.
- Congress should pass legislation to eliminate barriers to health coverage through Medicaid, the Children’s Health Insurance Program (CHIP), and the health insurance marketplaces for immigrants.
- Congress should fully fund the Department of Justice’s Civil Rights Division and the Department of Health and Human Services’ Office for Civil Rights.
- The Department of Health and Human Services (HHS) should issue strong federal guidance to state insurance commissioners on the enforcement of Section 1557 of the Affordable Care Act.
- The Centers for Medicare & Medicaid Services should update its qualified health plan (QHP) review and certification tools to include additional examples of discrimination, including transgender exclusions.
- The Centers for Medicare and Medicaid Services should issue guidance to state Medicaid directors clarifying that the arbitrary exclusion of medically necessary, transition-related care is inconsistent with federal law.
- The Departments of Justice and HHS should aggressively pursue Section 1557, HIPAA and other complaints and litigation to advance the rights of LGBT people in health care settings, and publicize positive resolutions.
- The Center for Medicare Services should ensure that Medicare and its contractors cover all medically necessary care for gender dysphoria as provided in the WPATH Standards of Care, without unfounded restrictions.
- HHS should direct each of its Operating Divisions to add voluntary demographic measures on gender identity and sexual orientation into existing surveys, program applications and evaluations, and other data collection instruments.

- HHS should direct each of its Operating Divisions to issue guidance, tailored to health programs it funds, on compliance with Section 1557 of the Affordable Care Act, including basic information about cultural competence and best practices for working with LGBT people.
- HHS should update the Healthcare.gov Marketplace application to include a more accurate two-step gender question (gender identity and sex assigned at birth) and an optional demographic question on sexual orientation.
- HHS should allow federally qualified health centers (FQHCs) to use local data to determine the health needs of LGBT people and people living with HIV/ AIDS in their areas and should provide support to FQHCs specifically serving these populations.
- The Agency for Healthcare Research and Quality (AHRQ) should formally designate LGBT people as a health disparity population for purposes of federal grants.
- The National Institutes of Health should establish and implement a robust LGBT health research agenda that includes a specific focus on the health and health care needs of transgender people, according to the recommendation of the 2011 Institute of Medicine report on LGBT health.
- The Food and Drug Administration should lift the ban on blood donation by men who have sex with men, which has also been used to exclude transgender donors regardless of their gender or sexual orientation.
- The Department of Health and Human Services should identify and promote best practices for providing effective, culturally competent, and nondiscriminatory care to LGBT patients in Title X Family Planning Clinics.
- The Office of Global Affairs should engage with the World Health Organization (WHO) to support appropriate revisions to the International Classification of Diseases (ICD) to de-pathologize gender diversity and reflect current medical science regarding gender identity.
- HHS should continue to prioritize the inclusion of demographic variables related to gender identity (sex assigned at birth and current gender) and sexual orientation in Meaningful Use and related programs introduced under MACRA, and continue to refine recommended standards for data fields, data elements, and data use related to gender identity and sexual orientation in certified EHRs

*See Improving the Lives of Trans Older Adults for more on Medicare and long-term care.*

*See Honor Our Veterans for more on veterans' health care.*

*See Counting Trans People in Federal Surveys for more on federal health surveys.*

*See Fighting HIV/AIDS for more on HIV/AIDS policy.*

CHAPTER 5

# FIGHTING HIV/AIDS



## FIGHTING HIV/AIDS

Overall, transgender people face HIV infection rates many times higher than the general population, and rates for transgender people of color are even higher.<sup>1</sup> Estimates are that one in four Black transgender people in the U.S. is living with HIV/AIDS.<sup>2</sup>

Discrimination, stigma, social isolation, bias among health and social service providers, and a lack of targeted prevention efforts have all contributed to these high levels of infection. The National HIV/AIDS Prevention Strategy, first issued in 2010 and updated in 2015, recognizes that transgender people are at high risk for HIV infection, and that until recently only minimal efforts have been made to target the trans population for prevention and treatment. Where transgender people have been included at all, they have often been inaccurately and unhelpfully lumped together with “Men who Have Sex With Men” (MSM) rather than addressed as a distinct population.<sup>3</sup> This neglect has been deadly, because research has shown that such concentrated epidemics require targeted responses for the most at-risk populations.

Notably, while transgender people face high levels of HIV infection around the world, the U.S. has taken only limited actions to promote targeted prevention efforts for trans people globally.

### POLICY ADVANCES

- The National HIV/AIDS Strategy was updated to state a commitment to developing indicators for progress on HIV among transgender people, and to recognize stigma against LGBT people and sex workers as barriers to HIV prevention and treatment. (2015).
- The Department of Justice urged states to repeal or reform HIV criminalization laws. (2014)
- The Supreme Court partially overturned the so-called “anti-prostitution pledge,” which denied international HIV/ AIDS and anti-trafficking funds to groups that support sex workers. (2013)
- The Centers for Disease Control and Prevention (CDC) revised the national HIV reporting system to allow state and local agencies to collect identifiable transgender data. (2012)
- CDC released its first transgender-specific HIV prevention grant announcements. (2012)
- The White House released the first ever National HIV/AIDS Strategy, acknowledging high rates of HIV infection among transgender people and call for prevention efforts focusing on transgender people. (2010)

### NEEDED POLICY CHANGES

- Congress should ensure that appropriations and any deficit reduction measures provide adequate funding levels to meet the goals of the National HIV/AIDS Strategy, reflect the

1 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 80; Centers for Disease Control and Prevention, HIV Infection Among Transgender People (2011). Available at: <http://www.cdc.gov/hiv/transgender/pdf/transgender.pdf>.

2 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 80.

3 White House Office of National AIDS Policy, National HIV/AIDS Strategy for the United States, at 14-15 (2010). Available at: <http://www.whitehouse.gov/sites/default/files/uploads/NHAS.pdf>.

latest epidemiological data, and are targeted to the highest prevalence populations and communities.

- Congress should ensure continuation of the Ryan White CARE Act (relating to HIV/AIDS), as a safety net and provider of support services as healthcare reform is fully implemented.
- Congress should fully fund comprehensive sexuality education and defund ineffective and dangerous abstinence-only-until-marriage programs.\*
- The President should withdraw National Security Presidential Directive 22 (2002), which conflates all commercial sex work with human trafficking and hinders efforts to engage sex workers and their advocates in the fight against HIV.
- The CDC should issue strong guidelines for state and local agencies on collecting uniform and identifiable transgender data in HIV reporting.
- The Office of National AIDS Policy and the Department of Health and Human Services (HHS) should promote and provide sustainable funding for peer-led prevention and treatment programs focused specifically on transgender populations.
- The Office of National AIDS Policy and HHS should promote, fund, and conduct research focusing on transgender men who have sex with men.
- The Centers for Disease Control and Prevention and the Department of Justice should study the recommendation of the World Health Organization that all countries decriminalize sex work and drug use and to make law and policy recommendations to Congress and the states to ensure that laws and enforcement practices do not conflict with public health strategies.\*
- Congress and the Administration should take further action to encourage states to narrow or repeal HIV criminalization laws that are inconsistent with current science and harmful to public health.
- Congress should fully repeal the so-called “anti-prostitution pledge” which denies international HIV/AIDS and anti-trafficking funds to groups that support sex workers.
- The CDC and the Department of Justice should implement comprehensive HIV prevention strategies for correctional facilities (including the Federal Bureau of Prisons) that include access to condoms.
- The President’s Emergency Plan for AIDS Relief (PEPFAR) should issue guidance for international HIV prevention efforts targeted at transgender people.
- The President’s Emergency Plan for AIDS Relief (PEPFAR) should require all PEPFAR-funded programs to certify that they do not discriminate against LGBT people in both employment and service provision.

*See Reforming Police and Ending Anti-Transgender Violence for more on domestic policy toward sex work.*

*\* This item is also listed in another section.*

CHAPTER 6

# REFORMING POLICE AND ENDING ANTI-TRANSGENDER VIOLENCE





## REFORMING POLICE AND ENDING ANTI-TRANSGENDER VIOLENCE

Transgender people today face an epidemic of anti-trans violence. Whether it occurs on our streets, in our schools, in our homes, or at the hands of law enforcement or other government officials, staggering levels of violence persist even as trans equality advances. The annual Transgender Day of Remembrance serves as a somber reminder of the losses suffered because of senseless and unjust acts of cruelty against transgender people. Twenty-six percent of respondents in the National Transgender Discrimination Survey have been physically assaulted on at least one occasion because of anti-trans bias.<sup>1</sup> Transgender people of color and transgender women are disproportionately affected, with nearly 3 out of 4 of lethal anti-LGBT hate crimes committed against trans women and girls.<sup>2</sup> Transgender people also experience heightened rates of family and intimate partner violence and sexual assault and are frequently re-victimized when they seek help.

Unfortunately, law enforcement is often part of the problem. In recent years the Black Lives Matter movement and others have focused renewed public attention on discriminatory policing, from racial profiling to excessive force against Black and Latino community members, as well as people with disabilities. These concerns also affect transgender people. Half of transgender people report they are uncomfortable seeking police assistance.<sup>3</sup> More than one-fifth (22%) of transgender people who had interacted with police reported police harassment, and 6% of transgender individuals reported that they experienced bias-motivated assault by officers. Black transgender people reported much higher rates of biased harassment and assault (38% and 15%).<sup>4</sup> NCTE and transgender advocates around the country have joined national efforts to demand police accountability and end racial profiling and other forms of discriminatory policing, including the profiling of transgender people (often called “walking while trans”).

Transgender people who have done sex work or participated in underground economies often report elevated levels of police violence—this includes 16% of all trans people, 34% of Latino/a trans people, and 53% of Black trans people.<sup>5</sup> Trans people who have done street economy work are more than twice as likely to report physical assaults by police officers and four times as likely to report sexual assault by police.<sup>6</sup> NCTE believes that dangerous conditions fostered by criminalization and police abuse are the primary threat to the safety of sex workers.

NCTE advocates for oversight, training, and policy changes for law enforcement, victim service providers, the courts, and other systems that impact anti-transgender violence and survivors of violence, as well as for data collection and research on violence against transgender people. We also advocate for reforms that would reduce the violence faced by sex workers and drug users by decriminalizing their behavior and emphasizing support and harm reduction over law enforcement.

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1 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 80.

2 National Coalition of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2013. New York, NY: NCAVP (2014). Available at: [http://avp.org/storage/documents/2013\\_ncavp\\_hvreport\\_final.pdf](http://avp.org/storage/documents/2013_ncavp_hvreport_final.pdf).

3 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 162.

4 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 160.

5 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 64.

6 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 160.



## POLICY ADVANCES

- DOJ investigated police abuses against LGBT people as part of pattern and practices investigations of several law enforcement agencies around the country including in New Orleans, Puerto Rico, Cleveland, Albuquerque, and Baltimore, and included specific LGBT protections in consent decrees. (2012-2016)
- DOJ offered resources on transgender cultural competency for law enforcement agencies, including in-person training, a roll call training video, and an inclusive guidebook on policing diverse communities. (2014-2016)
- The President's Task Force on 21st Century Policing recommended establishing LGBT-inclusive anti-profiling and anti-bias policies and training for police departments, and LGBT-inclusive research on the public's contacts with police. (2015)
- DOJ issued guidance prohibiting profiling by federal law enforcement agencies based on race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity--though with dangerous loopholes for airport security or border or customs officials.
- DOJ issued guidance stating that VAWA grantees must respect the gender self-identification of survivors of violence, meaning that women's shelters must accept transgender women. (2014)
- HHS prohibited anti-LGBT discrimination and other service barriers in its domestic violence services grant and made clear that individuals must be treated consistent with their gender identity (2013, updated 2016).
- Congress explicitly banned discrimination based on gender identity, sexual orientation, and sex in the Violence Against Women Act, which applies to all VAWA-funded programs. (2013)
- The FBI produced a new, trans-inclusive hate crime Training Manual and Hate Crimes Statistics Form for law enforcement agencies. (2012)
- Congress passed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, providing federal support to state and local authorities to address hate crimes, and adding gender identity to hate crimes data collection. (2009)

## NEEDED POLICY CHANGES

- Congress should pass the End Racial Profiling Act, which would explicitly prohibit profiling on the basis of race, national origin, religion, gender, sexual orientation, or gender identity by federal, state, and local law enforcement agencies.
- Congress should fully fund the Department of Justice's Civil Rights Division and Community Relations Service.
- Congress should pass common-sense gun safety legislation, such as closing background-check loopholes and banning assault weapons, and should fund public health research on gun violence.

- The President, the Attorney General, and other federal officials should consistently speak out against violent attacks targeting transgender people.
- The Department of Justice (DOJ) should take strong actions to implement all recommendations of the President’s Task Force on 21st Century Policing, including by encouraging stronger policies, training, data collection, and independent investigations on use of force; limiting acquisition of military equipment; and conditioning federal grants to law enforcement agencies on adopting anti-profiling and anti-bias policies that are LGBT-inclusive.
- DOJ should publish and disseminate model policies for law enforcement agencies on key topics including police sexual misconduct, interactions with LGBT people, and eliminating the confiscation and use of condoms as evidence.
- DOJ should continue to be proactive in launching pattern and practice investigations of police departments that have engaged in misconduct, including abuses towards LGBT individuals and sex workers.
- DOJ should use guidance, training, and funding criteria to promote implementation of the Prison Rape Elimination Act (PREA) Standards in police lockups and to address sexual abuse in patrol cars in other settings.
- DOJ should issue strong regulations to implement the Violence Against Women Act’s nondiscrimination provisions.
- The Departments of Justice, Health and Human Services, and others agencies should ensure that efforts to combat human trafficking prioritize harm-reduction-based services and other needs identified by affected individuals themselves over “end demand” and law enforcement-based responses.
- Congress or DOJ and the Department of Homeland Security (DHS) should commission an independent study of the effectiveness of Operation Cross Country and similar operations targeting the sex trade in addressing the needs of human trafficking survivors and of their impact on other individuals in the sex trades.
- The Centers for Disease Control and Prevention and DOJ should study the recommendation of the World Health Organization that all countries decriminalize sex work and drug use make law and policy recommendations to Congress and the states to ensure that laws and enforcement practices do not conflict with public health strategies.\*
- DOJ should require that gender identity and sexual orientation data be collected whenever demographic data is collected in programs for victims of crime.

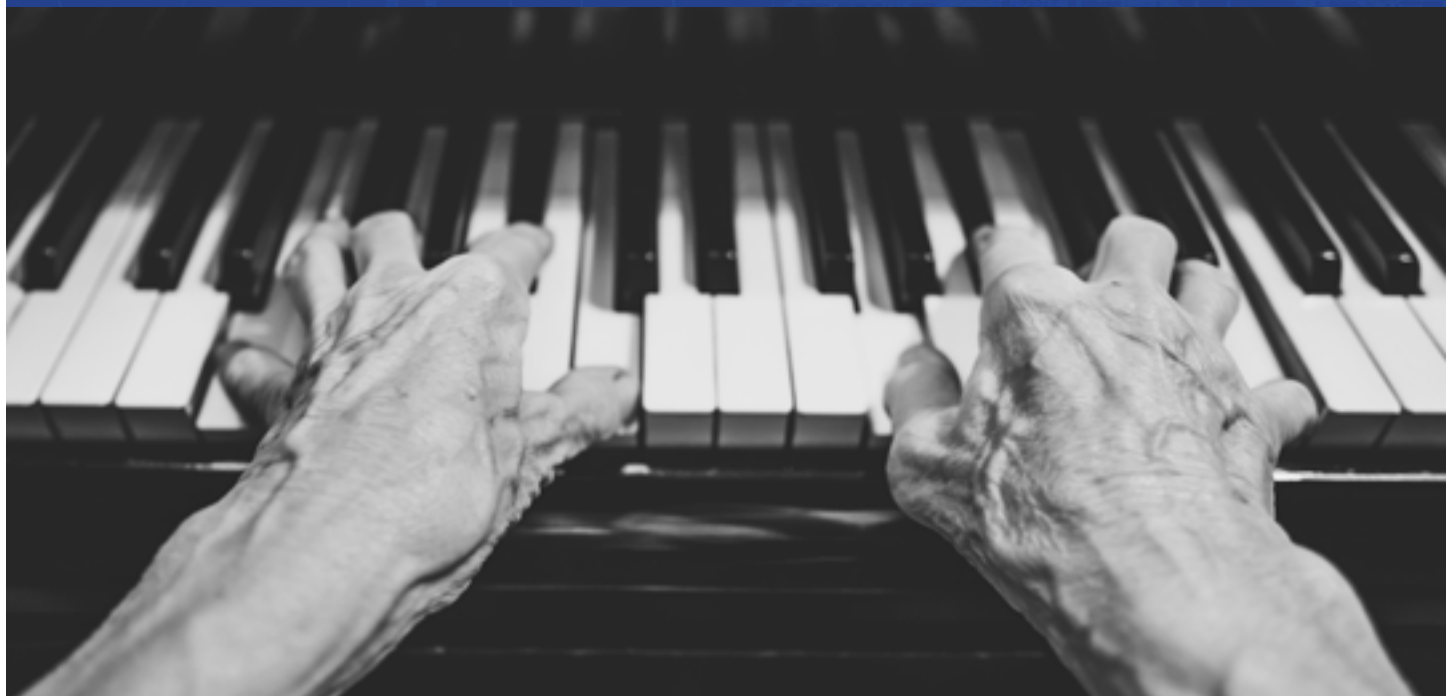
*See Ending Mass Incarceration and Abuse of Prisoners for more on criminal justice reform.*

*See Counting Trans People in Federal Surveys for more on data collection on violence and law enforcement.*

*\* This item is also listed in another section.*

CHAPTER 7

# IMPROVING THE LIVES OF TRANS OLDER ADULTS



## IMPROVING THE LIVES OF TRANS OLDER ADULTS

According to the national Caring and Aging with Pride survey, transgender older adults are a “critically underserved population at heightened risk of physical and mental health disparities often combined with less social and community support.” The same survey found that 40% of transgender older adults have been denied health care or received inferior care due to anti-trans bias.<sup>1</sup> A recent survey of 320 area agencies and state units on aging found that more than one in four reported that transgender older adults would either not be welcomed by local service providers or the agency was unsure of how welcome they would be.<sup>2</sup> Other research has revealed discrimination and abuse of transgender residents in long-term care facilities.<sup>3</sup>

While the challenges common to LGBT older adults have gained increased visibility in recent years, little study or discussion has focused on the specific needs and challenges facing transgender people as they age. In 2011-2012, NCTE partnered with Services and Advocacy for GLBT Elders (SAGE) and an advisory group of advocates and experts to develop an advocacy agenda focused on the needs of older transgender people. The group identified a wide array of key issues for older trans adults, including support from faith communities, cultural competence in aging and long-term care services, Medicare and veterans’ health coverage, research and data collection on older trans adults, and the continued need for employment opportunities as trans people age. The result was a 50-page report, *Improving the Lives of Transgender Older Adults*, which provides an introduction to transgender issues for aging advocates and provides more than 60 recommendations for policymakers and practitioners.

### POLICY ADVANCES

- The Administration for Community Living (which now governs aging-related policy) issued proposed guidance that it will require states applying for federal aging funds to indicate how they would address the needs of LGBT aging people as vulnerable populations. (2016)
- HHS released LGBT cultural competency online training tool for long-term care providers. (2014)
- The National LGBT Aging Resource Center is funded by HHS, an online resource center for older aging LGBT people and service providers. (2010)

### NEEDED POLICY CHANGES

- Congress should fully fund the Older Americans Act and amend the Act to make explicit that LGBT older adults constitute a group with “greatest social need” and that federally-funded service providers may not exclude LGBT older adults from programs and services.
- Congress should fully fund implementation of the Elder Justice Act, and the Department

1 Karen I. Frederickson-Goldsen et al., *The Aging and Health Report: Disparities and Resilience Among Lesbian, Gay, Bisexual and Transgender Older Adults*, at 5, 31. Available at: <http://caringandaging.org/wordpress/wp-content/uploads/2011/05/Full-Report-FINAL.pdf>.

2 Kelly Abel Knochel, Catherine F. Croghan, Rajean P. Moore, and Jean K. Quam, *Ready to Serve? The Aging Network and LGB and T Older Adults*, at 12. Washington, DC: National Association of Area Agencies on Aging, 2011. Available at: <http://www.n4a.org/pdf/ReadyToServe1.pdf>.

3 National Senior Citizens Law Center, et al., *Stories from the Field: LGBT Older Adults in Long-Term Care Facilities*. Washington, DC: NSCLC (2011). Available at: <http://www.lgbtlongtermcare.org/>.

of Health and Human Services should ensure that programs supported by the law give adequate attention to the vulnerabilities of LGBT older adults.

- The Centers for Medicare & Medicaid Services should revise federal nursing home guidelines to clarify the rights of LGBT residents to freedom from discriminatory abuse, personal privacy and dignity, and treatment consistent with a resident's gender identity.
- The Centers for Medicare & Medicaid Services should revise federal Medicaid regulations to explicitly prohibit discrimination based on gender identity and sexual orientation in home- and community-based services.
- The Centers for Medicare & Medicaid Services and the Administration for Community Living should develop and promote additional LGBT competence tools and training for long-term care facility staff, surveyors and ombudspersons, home care providers, and others who work with older adults, and incorporate LGBT rights into consumer education materials.

*See Access to Quality Health Care for more on health care policy including Medicare.*

*See ID Documents and Privacy for more on Medicare cards and Social Security records.*

CHAPTER 8

# COUNTING TRANS PEOPLE IN FEDERAL SURVEYS



## COUNTING TRANS PEOPLE IN FEDERAL SURVEYS

The persistent lack of data on transgender people's lives from authoritative federal surveys is one of the greatest policy failures facing the trans movement today. Because research and data drive laws, policies, and funding for the critical needs affecting our communities, it is essential that the federal government use the research it does— especially its population-based surveys—to measure the realities of life for various types of people. If people such as trans people are not counted, it is far less likely that our concerns will be effectively addressed. More than half of states now include demographic data on transgender people in statewide surveys. Despite supportive statements from agency leaders, to date researchers and program managers at federal agencies have failed to include measures that will effectively identify transgender people and reflect our lives in these surveys.

### POLICY ADVANCES

- The Bureau of Justice Statistics added demographic questions on gender identity and sexual orientation to its National Crime Victimization Survey. (2016)
- The Food and Drug Administration and National Institutes of Health added demographic questions on gender identity and sexual orientation to the Population Assessment of Tobacco and Health. (2013)
- The CDC added an optional state question on gender expression to the Youth Risk Behavior Survey. (2013)
- The CDC added an optional state question on gender identity to the Behavioral Risk Factor Surveillance System, the nation's system of health behavior surveys for adults. (2013)
- The CDC added demographic questions on gender identity and sexual orientation to its National Adult Tobacco Survey. (2012)

### NEEDED POLICY CHANGES

- The Department of Health and Human Services should direct each of its Operating Divisions to add voluntary demographic measures on gender identity and sexual orientation into existing surveys, including the National Health Interview Survey, the National Survey on Drug Use and Health, the Current Medicare Beneficiary Survey, and the Youth Risk Behavior Survey.
- The Department of Labor should include gender identity and sexual orientation measures in economic surveys including the Current Population Survey and the Survey on Income and Program Participation.
- The Department of Justice should include gender identity and sexual orientation measures in justice and corrections surveys including the National Survey of Youth in Custody.
- The Census Bureau should include gender identity and sexual orientation measures in the American Community Surveys and other surveys.



- The Federal Bureau of Investigation should include gender identity-related measures in the National Incident-Based Reporting System.

*See Access to Quality Health Care for more on transgender health research.*

## CHAPTER 9

# ID DOCUMENTS AND PRIVACY



## ID DOCUMENTS AND PRIVACY

In today's world, identification documents are needed to travel, open bank accounts, start new jobs, purchase alcohol, and even to purchase some cold medicines. Recent voter suppression efforts by some state legislatures have made voting an activity in which trans people without accurate ID may face unfair difficulties.

Historically, state and federal governments have imposed intrusive and burdensome requirements—such as proof of surgery and court orders—that have made it impossible for many trans people to obtain accurate and consistent ID. For many people, financial barriers, medical contraindications or a lack of medical need for surgeries, as well as broad discretion for local judges to impose their own standards, make these requirements impossible to satisfy.

As a result, out of those National Transgender Discrimination Survey respondents who had transitioned, only one-fifth (21%) had been able to update all of their IDs and records with their new gender. One-third (33%) had not updated any IDs or records. At the time of the survey, only 59% had been able to update their gender on their driver's license or state ID; 49% had updated their Social Security Record; 26% their passport; and just 24% their birth certificate.<sup>1</sup> The survey results also confirmed what most trans people already knew—that gender-incongruent identification exposes people to a range of negative outcomes, from denial of employment, housing, and public benefits to harassment and physical violence.<sup>2</sup>

Because of the work done by NCTE and activists around the country, many state and federal agencies have already improved their identity document policies. About half of states no longer impose such burdensome requirements for driver's licenses and state IDs and growing numbers are streamlining procedures, and NCTE has worked with the American Association of Motor Vehicles Agencies to educate state agencies about current best practices. State-level efforts have won improvements in birth certificate laws and policies in over a dozen states. Since 2010, onerous requirements for gender change on federal documents and records such as passports and green cards have also been eliminated.

These developments represent a growing recognition that older, more restrictive policies have served little, if any, purpose, and that reasonable policies enabling everyone to obtain accurate and consistent ID best serve both government agencies and individuals. There is still more to do, however. Though we have succeeded in making many improvements, many existing federal and state policies are still unduly burdensome, confusing, and demand unnecessary time and expense for individuals to obtain necessary documentation. NCTE advocates for policies that provide for ID change based on gender identity, not on medical treatment. NCTE also advocates that any policy requiring health care provider certifications should allow them from a range of licensed medical and mental health providers, not only physicians. Ultimately, listing gender on driver's licenses, state ID cards and many other documents is simply unnecessary to the purposes of identity documents and should be eliminated.

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1 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 140-50.

2 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 152-53.

## POLICY ADVANCES

- The Department of Defense began issuing updated military service records reflecting transgender veterans' current legal names. (2014)
- Federal agencies eliminated surgical requirements for updating gender on official documents and records and began accepting doctors' letters confirming "appropriate clinical treatment for gender transition," including:
  - the State Department for U.S. passports and Consular Reports of Birth Abroad (2010)
  - the Office of Personnel Management for federal personnel records (2011)
  - U.S. Citizenship and Immigration Services for immigration documents (2012)
  - the Social Security Administration for social security records (2013)
  - the Railroad Retirement Board (2013), and
  - the Defense Department for military retirees, dependents, and contractors (2014) and later for active service members (2016).
- SSA eliminated gender-matching when matching other data with private employers, ending so-called gender no-match letters (2011)

## NEEDED POLICY CHANGES

- Congress should repeal the REAL ID Act, and eliminate the requirement for listing gender on driver's licenses and state ID cards.
- The Department of State should further update the passport gender marker policy to accept a certification of an applicant's gender identity by a licensed medical or mental health provider, and to eliminate remaining burdensome procedural requirements.
- The Department of State should implement the International Civil Aviation Organization standard providing for an additional passport gender designation of X in addition to M and F.
- The Social Security Administration should eliminate computer matching of gender data in all remaining data-matching programs.
- The Social Security Administration should further update the Social Security record gender marker policy to allow for certification of an applicant's gender identity by a licensed medical or mental health provider.
- The Center for Medicare and Medicaid Services should remove sex as a data field on Medicare cards.
- The National Center for Health Statistics should issue an updated Model State Vital Statistics

Act that provides for gender change on birth certificates based on certification from a licensed medical or mental health provider, without proof of specific medical or surgical procedures and without a court order.

- US Citizenship and Immigration Services (USCIS) should further update the gender marker policy for US immigration documents to allow for certification of an applicant's gender identity by a licensed medical or mental health provider.
- The Office of Personnel Management should further update the gender marker policy for official federal employee personnel files to allow for certification of an applicant's gender identity by licensed therapists, psychologists, and nurse practitioners.
- The Defense Department should further update the gender marker policy for the Defense Enrollment Eligibility Reporting System (DEERS) to allow gender change military service members, retirees, dependents, and survivors based on certification of an applicant's gender identity by a medical or mental health provider.
- The Office of Management and Budget should review all new government forms and updates to forms to eliminate collection of gender data in cases where it does not serve a clear programmatic purpose.

*See Economic Opportunity for more on federal personnel records.*

*See Honoring Our Veterans for more on records for military veterans, retirees, and dependents.*

CHAPTER 10

# THE RIGHT TO TRAVEL





## THE RIGHT TO TRAVEL

In recent years, many Americans have been disturbed by the reliance of the Transportation Security Agency (TSA) on airport screening procedures that are far more intrusive than anything historically seen in the United States. These techniques—which often include intrusive body searches of passengers—present especially serious concerns for transgender people, who can be outed against their will only to face bias and harassment. These screening procedures can be especially traumatic for transgender children. In the National Transgender Discrimination Survey—which includes data collected before these more intrusive techniques were introduced—nearly one in five transgender travelers reported having been harassed or disrespected by airport security screeners or other airport workers.<sup>1</sup>

In 2011, the TSA began phasing in new screening technology that replaces electronic viewing of images of passengers' unclothed bodies with automated detection of potentially hazardous objects. While this technology promised to mitigate some privacy concerns, in fact the machines rely on assumptions about “normal” male or female bodies and routinely flag trans people's bodies or compression undergarments as “alarms.” TSA has promised to improve training, but no amount of training makes it acceptable for a traveler to have to discuss their private parts or have them searched by a uniformed official. NCTE continues to hear troubling stories from transgender travelers about their treatment by TSA, as well as by officials at U.S. border crossings. While NCTE has long worked with TSA to improve staff training, respond to individual complaints, and educate the trans traveling public, the agency's lack of transparency and persistent use of invasive and unproven security procedures are a continuing cause for concern.

### NEEDED POLICY CHANGES

- The Transportation Security Administration (TSA) should adopt more effective and less intrusive airport screening protocols that reduce the frequency of pat-downs, use gender-neutral technology, and do not require additional screening of transgender travelers based solely on their bodily characteristics, prosthetics, or undergarments.
- TSA should include transgender competence in its basic training curriculum for airport security screeners and other Transportation Security Officers.
- U.S. Customs and Border Protection (CBP) should include transgender competence in its basic training curriculum for CBP agents.
- The Department of Homeland Security should adopt policies explicitly prohibiting profiling and other forms of discrimination in TSA, CBP and other national security programs, including on the basis of gender identity and sexual orientation.

*See Immigration Reform for more on border enforcement and other immigration policies.*

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<sup>1</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 130, 132.



CHAPTER 11

# EQUAL ACCESS TO PUBLIC PROGRAMS



## EQUAL ACCESS TO PUBLIC PROGRAMS

All people should be able to access government services and publicly funded programs without fear that they will be turned away or mistreated because of who they are. Yet transgender and gender nonconforming people still face untenable levels of disrespect, discrimination, and even violence accessing public programs and social services.

In fact, the National Transgender Discrimination Survey showed that 32% of trans people reported experiencing harassment, discrimination, or violence when trying to access a government service or program.<sup>1</sup> This kind of publicly supported discrimination is unacceptable, and contrary to the goals of programs designed to serve public needs. For these reasons, federal agencies have the power to ban anti-LGBT bias in programs and activities they fund or conduct. While some have done so most have not, or have done so only for some programs but not all. Broad action across the government is needed to ensure that transgender people are not unfairly denied access to a public program or service.

### POLICY ADVANCES

- The US Agency for International Development (USAID) adopted regulations to prohibit anti-LGBT discrimination in USAID-funded programs. (2016)\*
- The General Services Administration released a bulletin to ensure visitors and employees can use restrooms consistent with their gender identity in federal buildings. (2016)
- The Department of Health and Human Services (HHS) proposed regulations to prohibit anti-LGBT bias by HHS contractors and grantees. (2015-2016)\*
- US Department of Agriculture (USDA) banned gender identity bias in USDA-run programs. (2014)
- HHS requires domestic violence programs to adopt LGBT anti-bias policy. (2013)\*
- HHS began requiring LGBT-inclusive nondiscrimination provisions in all public service contracts. (2012)
- Social Security Administration banned gender identity bias in its programs and issues cultural competence guidelines to employees. (2013)
- Congress explicitly banned anti-LGBT bias in Violence Against Women Act programs. (2013)\*
- HUD regulation banned anti-LGBT bias in federally-funded housing program. (2012)\*
- Federal Protective Service adopted guidance to ensure equal access to gender-appropriate restrooms in federal buildings. (2012)

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<sup>1</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 133.

- The Veterans Health Administration issued a directive on nondiscriminatory health care for transgender veterans. (2011)\*

*\* Notes Policy Advances also listed in other chapters of this Blueprint*

## NEEDED POLICY CHANGES

- Each federal department and independent agency should adopt a formal regulation or policy prohibiting discrimination based on gender identity and sexual orientation in all programs it conducts or funds, and requiring appropriate staff training, including the following key agencies and departments:
  - Department of Agriculture (USDA)
  - Department of Commerce
  - Department of Education
  - Department of Homeland Security
  - Department of Justice
  - Department of Labor

CHAPTER 12

# IMMIGRATION REFORM



## IMMIGRATION REFORM

In the absence of meaningful immigration reform, millions of individuals and families in the United States will continue to face unspeakable hardships, including the forced separation of families, escalating deportations of individuals with deep roots in their communities, and indefinite detention in cruel and abusive conditions. Of over 10 million undocumented Americans, we estimate that between 28,000 and 65,000 adults are transgender, along with thousands of transgender undocumented youth. Transgender immigrants face even higher levels of job, housing, and health care discrimination, and far higher rates of violence.<sup>1</sup> Current immigration laws present often insurmountable hurdles for trans immigrants, many of whom come to the US fleeing horrific violence and persecution in their home countries.

Current immigration enforcement policies, make our communities less secure by enlisting local law enforcement to enforce immigration laws and undermining community trust in law enforcement. Although transgender immigrants are at high risk of being victims of violent crime, they are frequently afraid to seek assistance from law enforcement. According to the NTDS, 46% of all transgender people, and 51% of Latino/Latina transgender people, state that they are uncomfortable seeking police assistance.<sup>2</sup> Turning local police into immigration agents encourages racial profiling and make extremely vulnerable populations even less likely to report crimes or be willing to testify in criminal cases.

Finally, immediate action is needed to dismantle and reform our massive, costly and inhumane system of prolonged immigration detention, in which transgender people are particularly vulnerable to abuse. The Department of Homeland Security (DHS) for years has promised substantial reforms, and NCTE has worked with other human rights advocates to see some reforms enacted, but relatively little has actually changed. DHS still needlessly detains hundreds of thousands of people each year in jails and jail-like facilities, and lacks binding, comprehensive standards or meaningful accountability for the private corporations and local governments it contracts with to operate them. Transgender detainees are still subjected to abuse, prolonged isolation, and deprivation of medical care. The solution is to replace detention with more humane and cost-effective community supervision for those in immigration proceedings as we work to fully reform our broken immigration system.

### POLICY ADVANCES

- The President announced the Deferred Action for Parents of Americans (DAPA) program and expansion of the Deferred Action for Childhood Arrivals (DACA) program—however this action has been suspended due to ongoing litigation. (2014)
- The Department of Homeland Security (DHS) issued Prison Rape Elimination Act (PREA) rules for immigration detention facilities, with limited LGBT protections limited. (2014)
- DHS issued a directive calling for limits on solitary confinement used in immigration detention

1 Jessica Jeanty & Harper Jean Tobin, *Our Moment for Reform: Immigration and Transgender People*. Washington, DC: National Center for Transgender Equality (2013). Updated estimates based on Andrew R. Flores, Jody L. Herman, Gary J. Gates, and Taylor N.T. Brown, *How Many Adults Identify as Transgender in the United States* (Williams Institute, 2016).

2 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 162.

facilities. (2013)

- The President instituted the Deferred Action for Childhood Arrivals (DACA) program. (2012)
- US Citizenship and Immigration Services (USCIS) issued guidance for adjudicating LGBT refugee and asylum claims. (2011)

## NEEDED POLICY CHANGES

- Congress should pass comprehensive immigration reform that includes a pathway to citizenship for undocumented Americans, strengthens critical protections for refugees and their families, and eliminates arbitrary filing deadlines for those seeking asylum.
- Congress should reduce appropriations for immigration detention, eliminate the detention bed quota that mandates a certain number of beds are filled each night in immigration detention facilities, and end mandatory detention requirements.
- Congress should eliminate overbroad grounds for inadmissibility and deportability, such as the 10-year bar for persons found to have engaged in commercial sex work.
- Congress should pass legislation funding legal representation for minors and other vulnerable immigrants in removal proceedings.
- The President should take strong executive action to provide relief for as many undocumented Americans as possible from deportation and family separation and to sharply curb the use of immigration detention. Individuals must not be excluded from relief on the basis of survival crimes or non-violent misdemeanors.
- The Department of Homeland Security (DHS) should end the use of private contract prisons to detain immigrants awaiting immigration hearings.
- The Department of Justice and the Department of Homeland Security (DHS) should provide automatic bond hearings for all immigrant detainees held by DHS for six months or longer.
- DHS should interpret the term “custody” in section 236 of the Immigration and Naturalization Act to permit the use of alternative forms of supervision outside of secure detention centers.
- DHS should eliminate the Priority Enforcement Program and other efforts to involve local police in immigration enforcement.
- DHS should adopt strict limits on solitary and restricted housing in immigration detention, including an unequivocal ban on prolonged segregation of LGBT detainees, survivors of torture or sexual abuse, individuals with mental illness, and others at risk of abuse.
- DHS should prohibit detention of all LGBT immigrants in all but the most extraordinary cases based on their high rates of victimization in detention.
- U.S. Customs and Border Patrol (CBP) should adopt clear policies and procedures to prevent excessive use of force and abuse of individuals detained by CBP, including providing for

individuals to be searched, housed, and otherwise treated in accordance with their self-identified gender.

- The Department of Health and Human Services and its Office of Refugee Resettlement should issue strong final regulations to prevent, detect, and respond to sexual abuse in facilities housing unaccompanied immigrant children, including ensuring transgender youth are housed according to their gender identity.
- U.S. Citizenship and Immigration Services (USCIS) should enable the collection of voluntary sexual orientation and gender identity information for asylum applicants and disaggregate “particular social group” asylum claims into discrete categories, including sexual orientation and gender identity based persecution.
- USCIS should adopt clear guidance on the granting of humanitarian parole for LGBT couples who are unable to legally marry.

*See ID Documents and Privacy for more on immigration documents.*

*See Family and Relationship Recognition for more on spousal immigration benefits.*

*See The Right to Travel for more on border crossings and airport security.*



CHAPTER 13

# ENDING MASS INCARCERATION AND ABUSE IN PRISONS



## ENDING MASS INCARCERATION AND ABUSE IN PRISONS

More than 2 million Americans today are behind bars, with Black people more than six times as likely to be incarcerated as whites, and Latinos are more than twice as likely to be incarcerated.<sup>1</sup> Transgender people also face stark disparities. Nearly one in six transgender people (16%) (including 21% of transgender women) have been incarcerated at some point in their lives—far higher than the rate for the general population. Among Black transgender people, nearly half (47%) have been incarcerated at some point—mirroring the stark racial disparities in all incarceration.<sup>2</sup> These high rates of incarceration are driven by pervasive discrimination, disproportionate poverty, homelessness, participation in underground economies, and bias and abuse by law enforcement officers.

Mandatory minimum sentencing requirements, the abolition of parole for federal prisoners, and inadequate policy response to homelessness and mental illness all play a role in the high incarceration rates at both the state and federal levels. Those incarcerated under federal minimum sentencing guidelines are overwhelmingly racial minorities and the poor.<sup>3</sup> Poverty, homelessness, and race have the most significant impact on incarceration rates: almost half (49%) of the National Transgender Discrimination Survey’s currently homeless respondents reported being incarcerated at some point, more than three times the rate of those who were not homeless; transgender people of color reported being incarcerated more often and for longer sentences.<sup>4</sup>

Trans people are also at extremely high risk for abuse in prisons, jails, and juvenile detention.<sup>5</sup> Despite federal regulations calling for “individualized” placements, most prison systems automatically house trans people based on the gender assigned at birth—often branding them as outcasts within the prison and making them targets for abuse. Denial of transition-related medical care remains common, as is prolonged isolation of trans people, which has been shown to have devastating effects on mental health and has been declared by the courts to be a form of torture.<sup>6</sup> These abuses occur within the context of a broken, overcrowded, and increasingly privatized prison system. Addressing both the harmful policies that drive mass incarceration and the intolerable conditions of prisons, jails, and detention facilities are urgent issues for trans people and our communities.

1 Pew Research Center, *King’s Dream Remains an Elusive Goal: Many Americans See Racial Disparities* (2013), [http://www.pewsocialtrends.org/files/2013/08/final\\_full\\_report\\_racial\\_disparities.pdf](http://www.pewsocialtrends.org/files/2013/08/final_full_report_racial_disparities.pdf).

2 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 163.

3 American Sociological Association, *Race, Ethnicity, and the Criminal Justice System*, available at, <http://www.asanet.org/images/press/docs/pdf/ASARaceCrime.pdf>.

4 For more on these issues, see Catherine Hanssens, Aisha C. Moodie-Mills, Andrea J. Ritchie, Dean Spade, and Urvashi Vaid. 2014. “A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV.” New York: Center for Gender & Sexuality Law at Columbia Law School.

5 National Prison Rape Elimination Commission, *Report*, at 73 (2009); Valerie Jenness et al., *Violence in California correctional facilities: An empirical examination of sexual assault*. Irvine, CA: Center for Evidence-Based Corrections (2009).

6 See, e.g., Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268 (United Nations, Aug. 5, 2011); Jeffrey L. Metzner and Jamie Fellner, *Solitary Confinement and Mental Illness in US Prisons: A Challenge for Medical Ethics*, *J. Am. Acad. Psychiatry and Law* 38:1:104-108 (March 2010).

## POLICY ADVANCES

- The Department of Justice (DOJ) published guidance clarifying that national Prison Rape Elimination Act (PREA) standards prohibit the automatic housing of transgender prisoners in facilities based on their anatomy or sex assigned at birth, and require serious consideration of placement consistent with gender identity. (2016)
- The DOJ announced it would phase out the use of private for-profit prisons, which have shown to be more dangerous and less accountable to oversight. (2016)
- The DOJ issued historic guidance and a key court brief urging jurisdictions to eliminate policies and practices that incarcerate individuals for inability to pay fees or fines or otherwise criminalize poverty. (2016)
- The DOJ filed a first-ever court brief arguing that local laws criminalizing homelessness are unconstitutional. (2015)
- The DOJ filed a first-ever court brief arguing that blanket limits on medical care for transgender prisoners are unconstitutional. (2015)
- The DOJ and the US Sentencing Commission implemented reforms to reduce federal sentences for non-violent drug crimes. (2013-2014)
- The PREA Resource Center issued positive guidance for prisons and jails on screening and searching transgender prisoners. (2013-2014)
- The National Institute of Corrections released an LGBT policy guide for state and local jail and prison facilities and began offering online LGBT training. (2013, updated 2015)
- DOJ issued final Prison Rape Elimination Act (PREA) regulations that included some transgender-specific protections, such as the ability to shower privately if requested, and the right to have an individual assessment with regard to being housed in male or female facilities. (2012)

## NEEDED POLICY CHANGES

- Congress should pass comprehensive criminal justice reform, which would make federal sentencing laws smarter, less costly, and more humane.
- Congress should reauthorize and strengthen the Juvenile Justice and Delinquency Prevention Act, including provisions to reduce youth incarceration and address racial and ethnic disparities.
- Congress should reform the Prison Litigation Reform Act to repeal or reform the requirements that a person have a physical injury and must exhaust all internal complaint processes at the prison before suing, and remove the law's application of the law to minors, all of which create excessive barriers to meritorious civil rights litigation.
- Congress should expand federal funding for drug treatment and community re-entry programs.

- Congress should consider reinstating parole for federal offenders and repealing unnecessary minor federal criminal statutes.
- Congress should fully fund the Department of Justice’s Civil Rights Division and implementation of the Prison Rape Elimination Act (PREA).
- The Department of Justice (DOJ) should issue guidance to states and municipalities on the constitutionality and cost-effectiveness of laws that effectively criminalize homelessness and poverty, incorporate investigation of civil rights abuses of homeless people as a standard practice in federal pattern and practice investigations, and include provisions these abuses in federal consent decrees.
- DOJ, the Housing and Urban Development, and other agencies should leverage federal funding criteria to discourage laws and practices that effectively criminalize homelessness and poverty.
- DOJ should ensure, through regulations or guidance, that all DOJ grantees including juvenile justice agencies are prohibited from engaging in discrimination on the basis of gender identity and sexual orientation.\*
- DOJ should prioritize increased oversight of state and local corrections and juvenile justice facilities by its Special Litigation Section, including investigating and seek broad relief regarding excessive use of solitary confinement and mistreatment of LGBT prisoners and those living with HIV.
- DOJ should vigorously enforce PREA by ensuring strict compliance with audit, certification, accreditation, and penalty procedures, and by providing training and resources to state and local agencies.
- DOJ should, by regulation or guidance, clarify that PREA standards apply to police cars and other temporary locations of police detention.
- The Federal Bureau of Prisons should adopt rules prohibiting the use of solitary confinement for periods of longer than 14 days, and for any period for minors, pregnant persons, and those with mental illness.
- The Federal Bureau of Prisons should adopt a presumption that transgender prisoners should be housed in facilities consistent with their gender identity absent an objection by the inmate or an extraordinary, individualized concern.
- The Federal Bureau of Prisons should adopt a comprehensive policy on management of transgender prisoners that ensures access to necessary mental health, medical and surgical care; access to gender-appropriate commissary items without restriction; professional staff communication; and provides for transgender prisoners to make an election whether to be subject to physical searches by male or female officers which will be followed absent exigent circumstances.
- The Federal Bureau of Prisons should establish an internal Office for Civil Rights.

*See Ending Anti-Trans Violence for more on law enforcement, anti-trans violence, and sex work.  
See Fighting HIV/AIDS for more on HIV and the criminal justice system.*

CHAPTER 14

# MILITARY SERVICE



## MILITARY SERVICE

Until recently transgender people have served with distinction, but in silence, in every branch of our armed forces. But while the repeal of “Don’t Ask, Don’t Tell” in 2010 has allowed lesbian, gay, and bisexual troops to serve openly, an estimated over 12,000 transgender service members were still forced to lie about who they are in order to serve their country.<sup>2</sup>

On June 30, 2016, the Defense Department announced that transgender service members may live openly without fear of discharge, and the military will adopt policies to allow qualified transgender individuals to enlist, provide medically necessary care, and support gender transition while serving. This change will bring the U.S. military in line with many of our allies, including Australia, Canada, the United Kingdom, and others. The new policies, for current service members, that have been released so far include some concerning limitations. New policies for transgender people joining the military will be in place by July 2017.

Important questions and challenges remain, including ensuring that requirements for gender transition in the military are reflect contemporary clinical standards and are not unduly burdensome and ensuring that non-binary transgender troops can serve consistent with their gender identity. A proposed 18-month waiting period between gender transition and military enlistment is unnecessarily long and will hamper recruitment of able and ready individuals. And the Defense Department continues to wrongly interpret an obscure federal law to require to deny necessary medical procedures for transgender military dependents that will be available to service members themselves.

### POLICY ADVANCES

- The Department of Defense ended the ban on transgender Americans in the United States military, allowing transgender Americans to serve openly and access necessary medical care, though with some concerning limitations. (2016)
- The Department of Defense partially repealed the exclusion of transition-related care (though still excluding surgery) for military retirees and family members in TRICARE. (2016)
- Prior to the end of the transgender service ban, the Secretary of Defense issued an effective moratorium on discharges under the ban. (2015)

### NEEDED POLICY CHANGES

- The Department of Defense should reduce the proposed 18-month waiting period for enlistment of transgender individuals following a gender-related diagnosis, transition, or treatment.
- The Department of Defense should simplify requirements for gender transition while serving by accepting health care provider certification of gender identity and for living consistent with

1 Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 30.

2 Gates, GJ and Herman, JL. 2014. Transgender Military Service in the United States. Williams Institute, UCLA School of Law.

their gender identity, and eliminate requirements for documentation from other government agencies or courts.

- The Department of Defense should adopt policies to permit transgender service members with a non-binary gender identity to serve in a manner consistent with their gender identity.
- The Department of Defense should review remaining regulations barring military service by people with intersex conditions and people living with HIV and adopt new rules based on current medical science.
- The Department of Defense should review and reform or eliminate its policies on prosecutions based on HIV and consensual sex.
- The Department of Defense should eliminate outdated medical care regulations that bar medically necessary procedures to treat gender dysphoria for military spouses and dependents.
- Unless and until Congress eliminates the Selective Service System (SSS) or makes it gender neutral, the SSS should work with other federal agencies to update its policies to eliminate confusion and prevent barriers to student aid and other opportunities for transgender people.\*

*See Honoring Our Veterans for more on policies affecting military veterans, retirees, and dependents.*



CHAPTER 15

# HONORING OUR VETERANS



## HONORING OUR VETERANS

Despite the ban on open military service by transgender people prior to 2016, many have made extraordinary personal sacrifices to serve their country. Estimates put the number of transgender veterans in the hundreds of thousands.<sup>1</sup> Unfortunately, many of these veterans have been denied access to medical care and other services guaranteed through the Veterans Administration (VA) and have faced discrimination and harassment at VA facilities.

The VA has taken important steps to address these discriminatory practices and improve treatment of trans veterans, but there is still more to be done to ensure that transgender veterans receive equal access to benefits. In particular, the VA still retains an arbitrary and outdated regulation prohibiting coverage for transition-related surgeries—even as every other major federal health program has moved to eliminate such exclusions.

### POLICY ADVANCES

- The Department of Defense began issuing updated military service records reflecting transgender veterans' current names. (2014)\*
- The Department of Veterans Affairs, (VA) updated its gender change policy for patient records. (2013)
- The VA issued a directive calling for nondiscriminatory treatment for transgender vets in VA health care facilities. (2011, updated 2013)

### NEEDED POLICY CHANGES

- The Department of Veterans Affairs (VA) should eliminate outdated regulations prohibiting coverage for medically necessary, transition-related surgeries for eligible veterans and dependents.
- The Department of Veterans Affairs should continue to develop and implement training and other resources on LGBT competence for VA staff, including clinicians.
- The Department of Veterans Affairs should simplify the gender marker policy for VA patient records to accept a certification of the patient's gender identity by a medical or mental health provider.
- The Department of Defense should publish a simple, uniform policy allowing transgender veterans and retirees to obtain documentation of military service that does not disclose a former name.

*See Military Service for more on military service.*

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<sup>1</sup> Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, at 30.

CHAPTER 16

# FAMILY AND RELATIONSHIP RECOGNITION



## FAMILY AND RELATIONSHIP RECOGNITION

The government should value and support all families. In 2015, the Supreme Court ruling in *Obergefell v. Hodges* delivered marriage equality nationwide. However, even with nationwide marriage equality, discriminatory practices still exclude many LGBT families from fostering, adoption, or recognition of parent-child relationships. It also remains important to recognize all families, including domestic partners of all genders who cannot or choose not to marry.

### POLICY ADVANCES

- The Supreme Court overturned state marriage bans for same-sex couples. (2015)
- The Social Security Administration issued guidance on recognizing marriages involving a transgender spouse, instead of treating all such marriages as “suspect.” (2014)
- The Supreme Court overturned section 3 of the so-called Defense of Marriage Act (DOMA), allowing the federal government to honor state-recognized same-sex marriages; agencies move to implement the ruling. (2013-on- going)
- US Citizenship and Immigration Services issued guidance on recognizing marriages involving a transgender spouse for immigration purposes. (2012)
- The Department of Labor issued an interpretation recognizing in loco parentis relationships for workplace family leave. (2009)

### NEEDED POLICY CHANGES

- Congress should pass the Every Child Deserves a Family Act, which would prohibit discrimination in adoption and foster care placements based on gender identity and sexual orientation.
- Congress should pass legislation to secure paid sick and family leave for all workers and their families, regardless of marital status or family structure.\*
- Congress should pass the Respect for Marriage Act to eliminate discriminatory and unenforceable language from federal laws.
- Congress and federal agencies should extend the same rights to domestic partners that are enjoyed by married couples in key areas such as health benefits and family leave.



CHAPTER 17

# ADVANCING GLOBAL HUMAN RIGHTS



## ADVANCING GLOBAL HUMAN RIGHTS

As a member of the Council for Global Equality, NCTE works with the Council to ensure that the United States uses its diplomatic, political, and economic influence to promote human rights and oppose human rights abuses that are too often directed at individuals because of their gender identity or sexual orientation. The US has played an important role in advancing the human rights of LGBT people in the United Nations as well as in bilateral and regional relations, and in 2015 established a Special Envoy for the Human Rights of LGBT Persons. However, much more can be done to deeply integrate human rights, including the rights of LGBT persons, into all aspects of US foreign policy.

### POLICY ADVANCES

- The US Agency for International Development (USAID) adopted regulations to prohibit anti-LGBT discrimination in USAID-funded programs. (2016)
- The United States supported the appointment of a United Nations Special Investigator Independent Expert on sexual orientation and gender identity LGBT human rights. (2016)
- The State Department established a US Special Envoy for the Human Rights of LGBTI Persons. (2015)
- The US joined a group of 25 nations in a historic joint statement of commitment to advance human rights and promote inclusive development for LGBT and intersex persons through increased cooperation. (2014)
- The US Agency for International Development announced the LGBT Vision for Action and appointed a senior-level LGBT Coordinator, outlining agency priorities and actions to date to support LGBT-inclusive international development work. (2014)
- The Department of State sponsored numerous people-to-people exchanges and speaker programs to support LGBT human rights defenders and advance understanding of LGBT rights as human rights, including through its International Visiting Leaders Program. (2010-2016)
- The United Nations (UN) launched its global “Free and Equal” public education campaign for LGBT human rights with the support of the United States. (2013)
- President Obama issued a memorandum directing all federal agencies to take action on LGBT human rights abroad. (2011)
- The United Nations High Commissioner for Human Rights issued a historic report finding a pattern of human rights violations against LGBT people. (2011)
- The State Department launched the Global Equality Fund to support LGBT human rights activists around the world. (2011)
- The State Department required the inclusion of began including LGBT issues people in its

annual human rights country reports for all countries. (2010)

## NEEDED POLICY CHANGES

- The President should issue a new Presidential Memorandum directing all federal agencies working abroad should continue to promote and protect the human rights of LGBT people in U.S. diplomacy and foreign assistance work, including through direct support for transgender and LGBT organizations. IssueThe President should issue a new Presidential Memorandum directing foreign affairs agencies to integrate LGBTI concerns systematically into USG foreign policy programs.
- The Department of State should require automatic policy reviews whenever a foreign country enacts new anti-LGBT policies, such as the review undertaken following passage of Uganda's repressive anti-gay law in 2013.
- The Department of State, and other foreign affairs agencies should require that government contractors and grantees globally adopt global LGBT-inclusive nondiscrimination policies for both employment and service delivery.
- The Department of State should continue engage in a vigorous and concerted effort to use people-to-people exchanges and speaker programs in all global regions to support transgender human rights defenders and advance understanding of transgender rights as human rights.
- The U.S. Trade Representative should ensure that the human rights safeguard clause in any prospective bilateral or regional trade accord includes specific reference to transgender populations.
- The Departments of State and of Commerce should encourage dialogue on include transgender equality within into the dialogue and work programs of American Chambers of Commerce abroad.
- The Bureau of Population, Refugees and Migration should continue its work on enhancing protection of LGBT refugees and continue to ensure implement a transparent, meaningful system of expedited processing for the resettlement of refugees who face an imminent risk of danger in their countries of first asylum, in coordination with the Department of Homeland Security.
- The Office of Global Affairs in the Department of Health and Human Services (HHS) should engage with the World Health Organization (WHO) to support appropriate revisions to the International Classification of Diseases (ICD) to de-pathologize gender diversity and reflect current medical science regarding gender identity.\*
- The Office of Global Affairs in HHS should engage with the World Health Organization (WHO) to pass a resolution recognizing global LGBT health disparities and calling for action to address them.

*See Fighting HIV/AIDS for more on international HIV/AIDS policy.*



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