



WORKSHOP J.

Moving Towards Civil Gideon

*2014 Legal Assistance
Partnership Conference*

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NEW YORK STATE BAR ASSOCIATION

2014 PARTNERSHIP CONFERENCE

J. BEYOND LAW REFORM: BUILDING A PRACTICE THAT MEETS THE NEEDS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER CLIENTS

AGENDA

September 12, 2014
9:00 a.m. – 12:15 p.m.

3.5 Transitional CLE Credits in 0.5 Ethics, 0.5 Law Practice Management & 2.5 Professional Practice.

Under New York's MCLE rule, this program has been approved for all attorneys, including newly admitted.

Panelists:

Ez Cukor, Esq., Staff Attorney, LGBT Law Project, New York Legal Assistance Group
Laurie Izutsu, Esq., Senior Staff Attorney, Immigrants' Rights and Advocacy Project, Brooklyn Legal Services
Ashe McGovern, JD, Equal Justice Works Fellow, LGBT Law Project, New York Legal Assistance Group
Elana Redfield, Esq., Staff Attorney, Sylvia Rivera Law Project
Julia A. Sáenz, Esq., Hanna S. Cohn Equal Justice Fellow, LGBT Rights Project, Empire Justice Center
Sonja Shield, Esq., Senior Staff Attorney, Brooklyn Legal Services

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| I. Ethical Considerations in Providing Competent Representation to Transgender Clients | 9:00 am – 9:25 am |
| II. Practical Considerations In Building a LGBT Legal Services Practice | 9:25 am – 9:50 am |
| III. Skills and Practical Considerations For Providing Competent Representation To Transgender and LGB Clients | 9:50 am – 10:40 am |

FIVE MINUTE BREAK

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| IV. Using State Human Rights Law and Other Anti-Discrimination Laws To Enforce The Rights of Transgender Clients | 10:45 am – 11:35 am |
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TEN MINUTE BREAK

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| V. Name and Gender Marker Change | 11:45 am – 12:15 pm |
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Substantive Outline

J. BEYOND LAW REFORM: BUILDING A PRACTICE THAT MEETS THE NEEDS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER CLIENTS

OUTLINE

I. ETHICAL CONSIDERATIONS IN PROVIDING COMPETENT REPRESENTATION TO TRANSGENDER CLIENTS

Ethical rules require attorneys, judges and court personnel to treat everyone with respect. In conjunction with state and local definitions of discrimination and protected classes, this means homophobia and phobia of transgender people (transphobia) are not permissible. Here are some of the applicable ethical rules:

A. Ethical Rules Applicable to Attorneys and Law Firms

1. “A lawyer should provide competent representation to a client . . . (c) A lawyer shall not intentionally: (1) fail to seek the objectives of the client through reasonably available means permitted by law and these Rules; or (2) prejudice or damage the client during the course of the representation except as permitted or required by these Rules.” NY ST RPC Rule 1.1(a)
2. “Subject to the provisions herein, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.” NY ST RPC Rule 1.2(a).”
3. “A Lawyer or law firm shall not . . . unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation.” NY ST RPC Rule 8.4(g)
4. In relation to working with transgender and LGB clients
 - a. Gendering/misgendering can prejudice a client/fail to seek her objectives discuss implications with client
 - i. “I haven’t gone through all this only to have a court vindicate my rights as a gender non-conforming man.” McGowan, Sharon, Working With Clients to Develop Compatible Visions of What It Means to “Win” a Case: Reflections on *Schroer v. Billington*, 45 Harvard Civ. Liberties Civ. Rights Law Rev. 206 (2010).
 - b. Cisgender (non-transgender) clients are not typically mis-gendered during litigation. This should not happen to transgender clients either.
 - c. Use the client’s preferred name and pronouns, including in pleadings and court papers. *See, Cuoco v. Moritsugu*, 222 F.3d 99, 113 n.1 (2d Cir. 2000); *see also, Ava v. NYP Holdings, Inc.*, 64 A.D.3d 407, 408 (1st Dept. 2009); *see also, Brian L. v. Administration for Children's Services*, 51 A.D.3d 488, 489 (1st Dept. 2008); *see also Matter of E.P.L.*, 891 N.Y.S.2d 619, 621 (Sup. Ct. Westchester Co. 2009); *see also, Matter of John Doe*, [Index Number Redacted by Court], NYLJ 1202601879249, at *1 (Sup. Ct., Westchester Co., Decided May 16, 2013).

- d. Ask opposing counsel, judge, and court officers to do the same.
5. Separate the legal issue at bar from personal curiosity and refrain from asking unnecessary/irrelevant questions about a transgender person's medical history, gender history, transition, sexual orientation etc.
 - a. Respond appropriately when opposing party, court officers, judges ask such questions.

B. The Judicial Cannon

1. "A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct. A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding." N.Y. Comp. Codes R. & Regs. tit. 22, § 100.3(B)
2. Follow these rules:
 - a. Use preferred pronouns and titles for transgender clients just as for cisgender (non-transgender clients).
 - b. Refrain from making derogatory comments based on transgender status.
 - c. Separate the legal issue at bar from personal curiosity and refrain from asking unnecessary/irrelevant questions about a transgender person's medical history, gender history, transition, sexual orientation etc.
 - d. Hold court staff and those "subject to their direction and control" to do the same.
 - e. Call the case using preferred name or last name.

II. PRACTICAL CONSIDERATIONS FOR BUILDING A LGBT LEGAL SERVICES PRACTICE

A. Why LGBT Legal Services?

1. Research indicates that LGBT persons are overrepresented in low-income communities. Direct legal services providers who strive to seek equal justice for low-income individuals have a professional responsibility to serve all clients with competence and respect. Ensuring that this mission is carried out requires a commitment to adapting strategies that are more inclusive of the LGBT community.
2. Sakimura, Catherine, Torres, Daniel et. al., Serving All Communities: Providing Respectful and Competent Services to Low Income LGBT Clients, 47 Clearinghouse Review: Journal of Poverty Law and Policy 336 (2014). Appendix 3.

3. Torres, Daniel A *Rural Legal Aid Perspective on Creating a LGBT Program*, Management Information Exchange Journal (Spring 2012). Appendix 4

B. Role of lawyers vs. role of community and clients

1. Who is directly affected? Multiple roles for lawyers who are LGBT or POC, and/or low income
2. Lawyers are charged with providing competent legal services to LGBT clients. This means developing knowledge of the legal issues faced by the community, attaining the skills necessary for carrying out respectful services, and performing case handling practices and representation diligently, with an eye towards confronting bias and challenges both internal and external to the organization.

C. Identify unmet client needs and gaps in service both within your organization and within the larger community organizations.

1. Pros and Cons of Community Advisory Board
 - a. A Community Advisory Board is comprised of community members who share a common interest, identity, history or culture. They may have unique knowledge and skills to make recommendations and/or provide information and materials to the organization. However, the Advisory Board is not empowered to govern the organization or compel its staff to act. This section will include a discussion of the advantages and disadvantages of inviting a Community Advisory Board to participate in the needs assessment process.
2. Gathering information. *See also* Appendix 5.
 - a. In order to determine the key legal needs of the LGBT community and whether they are being met, legal services providers should consider the use of periodic needs assessments. Such assessments lend insight into the extent of existing legal problems within the community and provide guidance in tailoring programs to bolster services where gaps have been identified.
 - b. Conducting a needs assessment is a multi-step process that tends to require a significant commitment beyond case handling services and representation. Establishing a working committee is essential to this process. The committee serves to identify the issues to be addressed and the information that is needed, determines how the needs assessment will be carried out, coordinates information gathering, analyzes the data, and reports the results.
 - c. Materials
 - i. Low Income LGBTQ Legal Needs Assessment Provider Survey
 - ii. Low Income LGBTQ Legal Needs Assessment Provider Demographics
 - iii. Legal Services NYC's Survey of Legal Needs of the NYC LGBT Community

D. Building and administering a needs assessment

1. Identify what you want to learn. Examples:
 - a. What do clients currently come to us for?
 - b. What are the needs of the community we seek to serve?

- c. What are our existing gaps in service?
 - d. What are our peer organizations doing?
 - e. What if any reputation do we have in the community, and what are the areas for improvement?
- 2. Review existing literature
 - a. Learn what demographic and descriptive work has already been done.
 - b. Identify useful questions, and learn how to phrase questions.
 - c. Don't reinvent the wheel.
- 3. Develop needs assessment instrument(s)
 - a. Aimed at existing or potential clients? Peer organizations? Other?
 - b. Administer in person? Over internet? Using facilitator/intermediary?
 - c. Electronic and/or paper format?
- 4. Develop plan for execution
 - a. Identify appropriate and diverse community partners (other legal offices; non-legal groups serving similar populations; etc.).
 - b. Administer in office, or travel to outside locations?
 - c. How will what you learn get reported back to others in the organization?
- 5. Analysis and incorporation of findings
 - a. Plan how findings will be compiled and synthesized.
 - b. Make plan for how you will modify your existing work, structure of organization, etc., to respond to what you learned.

E. Strategies and tips for working with other units, branch offices, or organizations to build coordinated and comprehensive services while respecting differing priorities and resources of each unit, office, and organization.

- 1. Honest self-assessment of priorities and resources.
- 2. Honoring different priorities and agendas.
- 3. Articulate communication and decision-making plan; use of point people & committees.
- 4. Building shared goals and vision with different priorities and resources.

F. Launching a new practice

- 1. Building a separate practice vs. placing dedicated attorneys within an existing practice (building competency throughout organization, creating silos of expertise).
- 2. Building expertise in new area

G. Issues specific to working in more rural communities including challenges/needs of clients living in upstate New York.

- 1. There may not be any other lawyers handling LGBT-specific cases. Build the capacity of other service providers, including social services agencies, health organizations, and the private bar, to take on cases with LGBT clients. A great way to do this is to host trainings on LGBT cultural competency and legal issues specific to the LGBT community.

2. Because of the insular nature of some rural communities, privacy concerns can be particularly strong. Sealed and publication-exempt name changes become all the more important (*see* section V.).
3. If your office is located in an urban center, be willing to travel to where the potential clients are or coordinate with another provider in the client's life that may provide travel assistance.

H. Community-based agenda-setting as a way to prioritize needs.

1. The Sylvia Rivera Law Project incorporates a non-conventional leadership structure into legal services, in order to maximize the voice of low income transgender people and transgender people of color in determining the issue areas we focus on. Workplans are based not only on the legal needs identified by the lawyers, but also on the political issues our membership prioritizes. SRLP also uses a multiple-strategy approach, incorporating direct services, media, litigation, and community organizing to achieve policy goals.
2. Gabriel Arkles, Gehi, Pooja, Redfield, Elana, The Role of Lawyers In Trans Liberation: Building a Transformative Movement For Social Change, Seattle Journal for Social Justice, Volume 8, Issue 2, (Spring/Summer 2010).

III. SKILLS AND PRACTICAL CONSIDERATIONS FOR PROVIDING COMPETENT REPRESENTATION TO TRANSGENDER AND LESBIAN, GAY, BISEXUAL (LGB) CLIENTS.

A. Working with Transgender Communities

1. What Do We Mean By Transgender?
 - a. Often attorneys are not familiar with transgender issues and do not realize a client may fall into a protected class of people. Yet at the same time, it is important to understand that transgender people are a diverse group of people, not easy to categorize, and many people we perceive as transgender may not even identify that way but still experience discrimination.
 - b. Transgender people make up .3 to 1% of the population, but hard to get a solid number for various reasons:
 - i. Transgender people are targeted for violence and ridicule, and thus may not want to "out" themselves.
 - ii. Transgender people have a right to privacy, and may not choose or want to discuss transgender issues if not relevant to the case (for example, if they come to see you about a nonpayment case or small claims issue).
 - iii. Survey tools often do not capture transgender people. For example, "M" or "F" census categories don't tell you whether a person is transgender.
 - c. Examples of who might be transgender:
 - i. People who dress in a way not associated with birth sex.
 - ii. People who identify in a way different than birth sex.
 - iii. People who present or express their gender in a way that doesn't conform to expectations of male and female.

- d. For more information about transgender people and information about the types of discrimination faced, including statistics, please *see*, Transgender 101, Sylvia River Law Project. Appendix 1
2. Basic Terminology
 - a. Working definition of Transgender: A term that describes people with a **gender identity** that does not match the sex they were **assigned at birth**.
 - b. Assigned Sex at Birth: The male or female identity that infants are assigned at birth. Sex is usually associated with anatomic or physical markers such as: facial hair and body hair, breasts/chest, vagina/penis/genitals, ovaries/ testes/ reproductive organs.
 - c. Intersex or Differences of Sex Development: Conditions wherein an individual's reproductive or sexual anatomy and/or a chromosome pattern does not seem to fit typical definitions of male or female as defined by medical providers
 - d. Gender: The World Health Organization defines gender as “the result of socially
 - e. Gender Identity: An individual's self-conception of their gender.
 - f. Gender Expression: How people express their gender identity or gender role.
 - g. Important distinction: Transgender vs. Transsexual
 - i. “Transgender” is considered a more general umbrella term, while “transsexual” often has a medical connotation. While many trans people identify as transsexual, many may not.
 - h. Language Should Always Be Accurate and Affirming
 - i. The best thing to do is always reflect back the language that a person uses for themselves.
 - ii. Say **trans-woman** (or transgender woman) to refer to a person who was assigned male at birth and lives and/or identifies as a woman
 - iii. Say **trans-man** (or transgender man) to refer to a person who was assigned female at birth and lives and/or identifies as a man.
 - iv. Terms to Avoid – Terms that are derogatory or refer to a particular identity and should not be attributed to a person without knowing they identify that way. Many of these terms are common in media portrayals of transgender people or other contexts.
 - a) Tranny, Shemale, He-She, etc.
3. Tips for Advocating for Transgender Clients
 - a. Respect the client's gender self-determination. Be conscious of the gendered assumptions you may make based on a person's name, appearance, mannerisms etc., and don't assume your clients conform to these assumptions.
 - i. If you are unsure what name, or gender pronouns or titles your client prefers, ask them.
 - ii. Asking is always preferred to assuming. For example, if your client is transgender and their legal documents don't match up, you may continue

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to refer to them in a way that makes them uncomfortable and/or minimizes their lived experience. This will erode trust and signal to the court that the person's gender variance is not important.

b. Always use the client's preferred name and pronouns, including in pleadings and court papers. *See, Cuoco v. Moritsugu*, 222 F.3d 99, 113 n.1 (2d Cir. 2000); *see also, Ava v. NYP Holdings, Inc.*, 64 A.D.3d 407, 408 (1st Dept. 2009); *see also, Brian L. v. Administration for Children's Services*, 51 A.D.3d 488, 489 (1st Dept. 2008); *see also, Matter of E.P.L.*, 891 N.Y.S.2d 619, 621 (Sup. Ct. Westchester Co. 2009); *see also, Matter of John Doe*, [Index Number Redacted by Court], NYLJ 1202601879249, at *1 (Sup. Ct., Westchester Co., Decided May 16, 2013).

i. Ask the court, court officers, and opposing counsel to use the client's preferred name and pronouns as well. Ask the court personnel to call the case using last name or preferred name.

c. Sometimes your client's legal issue will be completely unrelated to her transgender status. As with cisgender clients, do not allow yourself, other parties to probe the client for information about her gender identity, expression or surgical/medical history when it is not relevant to the legal issue at hand.

i. Transgender confidentiality is protected under the law in the Second Circuit, and in other Jurisdictions.

a) "The Constitution does indeed protect the right to maintain the confidentiality of one's transsexualism." *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999) (holding that disclosure of a post-operative trans woman's trans status by prison officials violated her constitutional right to privacy because "individuals who are transsexuals are among those who possess a constitutional right to maintain medical confidentiality"). The court continued, "transsexualism is the unusual condition that is likely to provoke both an intense desire to preserve one's medical confidentiality, as well as hostility and intolerance from others. The excruciatingly [sic] private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really beyond debate." *Id.* The court specifically noted that "[i]ndividuals who have chosen to abandon one gender in favor of another understandably might desire to conduct their affairs as if such a transition was never necessary." *Powell*, 175 F.3d at 111.

d. Understand the complicated ways that transgender people experience discrimination, and seek to intervene in these processes as an advocate and representative.

i. *See Systems of Inequality: Poverty and Homelessness*, Sylvia Rivera Law Project (undated). Appendix 2.

- ii. Trans discrimination is not limited to interpersonal violence and harassment, although transgender people experience violence at alarmingly high rates – trans women represent 10% of all survivors/victims of hate violence, and 45% of murders. 85% of victims were people of color – See Dixon, Ejeris et. al., Hate Violence Against Lesbian, Gay, Bisexual and Transgender Communities In the United States in 2011, National Coalition of Antiviolence Programs (2012) available at: http://www.cuav.org/wp-content/uploads/2012/08/4379_NCAVPHVReport2011Final_Updated.pdf
- e. Our systems of government, health care, economics are fundamentally geared toward a two-gendered, non-trans understanding of society. Gender difference becomes a square peg in a round hole. The work of transgender advocates is to create new systems and structures that can accommodate transgender , gender non-conforming (GNC) and intersex people and allow them to thrive.
 - i. Transgender discrimination is discussed at length in *Injustice At Every Turn*, the findings of a national survey regarding transgender discrimination. Grant, Jaime M, 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*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.
 - ii. ID documents: show name, gender, photograph, signature, required for many purposes including employment and housing, often require strict medical documentation to change and thus many transgender people are forced to carry ID that doesn't look like them or affirm their identity. Alternatively, some don't carry any ID or use fake ID.
 - iii. Bathrooms: segregated by gender. Access is protected under NYC and NYS laws (See, *Hispanic AIDS Forum v Estate of Bruno*, 2007 NY Slip Op 27284, 16 Misc. 3d 960 [July 11, 2007]), although NYC law is more specific. Common issues include being reported to police or guards by other patrons, being arrested for using the wrong bathroom, often charged with disorderly conduct because there is no law against using the wrong bathroom. Many transgender people do not feel comfortable using wither bathroom so single stall or all-gender bathrooms are preferred.
 - iv. Family roles & structures: Transgender people are disproportionately likely to be kicked out of their homes. The Injustice At Every Turn study found that approximately half of all transgender people have experienced significant rejection by their families. This connects directly with increased homeless and poverty due to lack of family support.
 - v. Employment: Many transgender people experience discrimination when applying for work, because they are open about being transgender or because their documents don't match up, or because their references know

them by another name or gender. Furthermore, many transgender people face firing or other adverse employment conditions if they transition on the job. These forms of discrimination are protected against under New York State's Human Rights law as sex-based discrimination. *See, e.g. Buffong v. Castle on the Hudson*, 11634/05; *Rentos v. Oce-Office Systems*, 1996 WL 737215.

vi. Housing: Transgender people face many obstacles to getting housing. One is that they may not have ID that matches their gender. Another is disproportionate poverty and homelessness. Another is that many landlords will not rent to a transgender people due to bias.

vii. Healthcare structures: Often linked to assigned birth sex and/or gender of record. Many insurance programs, including NYS Medicaid, deny this care. However, the trend is to start covering it, including Medicare program and Massachusetts along with California which has done this for a while. A critical piece is to remove gender-based limitations on procedures such as surgeries, services such as OBGYN and prostate exams, pap smears, and medicines such as hormones.

viii. Policing practices: Transgender people are frequently arrested for issues related to ID and presumptions about sex work. Transgender people often charged with prostitution when presenting publically in a way that does not match their ID or assigned sex.

ix. Gender expression: Many settings, including workplaces, schools and courts have specific dress codes based on gender. Making these codes gender-neutral allows for transgender people to avoid reprisal and for gender non-conforming people to choose respectable attire that is also gender-affirming.

IV. USING ANTI-DISCRIMINATION LAWS TO ENFORCE THE RIGHTS OF TRANSGENDER CLIENTS

A. New York State and City Human Rights Laws prohibit discrimination in housing, public accommodations and employment.

B. Public Accommodations

1. Discussion of recent cases using City and State Human Rights laws to enforce transgender people's right to non-discriminatory access to public benefits and housing.
2. A note about disability-based claims with regard to transgender people:
 - a. Differing opinions re impact of using disability claims.
3. NYS Human Rights Law prohibits discrimination on the basis of sex, sexual orientation and disability. NY Exec. Law §296.
 - a. No express statutory prohibition on discrimination based on gender identity or transgender status.
 - b. The sex and disability provisions are increasingly construed to prohibit discrimination against someone for being transgender. *See, e.g., Doe v. Bell*, 754

N.Y.S.2d 846 (N.Y. Sup. Ct. 2003); *Doe v. City of New York*, 2013 WL 6231398 (N.Y. Sup. Ct., 2013); *Buffong v. Castle on Hudson*, 12 Misc. 3d 1193(A), 824 N.Y.S.2d 752 (N.Y. Sup. Ct. 2005)

4. NYC Human Rights Law prohibits discrimination on the basis of sexual orientation, gender and disability. NYC Admin Code § 8-104(23).
 - a. The gender provision expressly includes “actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth. NYC Admin Code § 8-102(23).
5. HIV/AIDS Services Administration (HASA) – NYC Admin Code § 21-128.
6. HASA nondiscrimination policy P-09-22, “Serving Transgender, Transsexual, and Gender Nonconforming Individuals” prohibits discrimination and outlines specific forms of discrimination that will not be tolerated
7. *Doe v. City of New York*, *supra*, challenged widespread practices of “outing” transgender people and mistreatment at HRA. Includes HRA’s refusal to issue the Plaintiff a new ID card that showed her female gender.
8. *Wilson v. Phoenix House*, 42 Misc. 3d 677 (N.Y. Sup. Ct., 2013) Transgender woman who was harassed and denied reasonable accommodation by a residential drug treatment program stated a claim for housing discrimination under NY State and NY City Human Rights Laws.
 - a. “The legal and political community has made great strides in the last decade toward assuring legal equality for lesbian, *755 gay and bisexual persons. (The LG and B of LGBT.) However, with regard to transgendered and other gender nonconforming people, there has been far less progress in addressing their legal rights. In fact, there has been a considerable lack of understanding in the courts with regard to issues of concern to this population. . . The court notes that transgender litigants with claims of discrimination have had some success with claims under 42 U.S.C. § 1983 on both First Amendment and Fourteenth Amendment grounds.” *Id.*
 - b. “As described in a recent law review Note . . . The legal needs of transgender and other gender nonconforming people are varied and diverse. Gender transgressive people often experience harassment and discrimination that results in social marginalization, including the denial of education, employment, housing opportunities, and health care. Because of this, transgender people are disproportionately affected by poverty and frequently rely upon public assistance programs such as welfare, Medicaid, and foster care. Additionally, the combination of poverty and employment discrimination leads to a disproportionate number of transgender people participating in criminalized economies; therefore, gender nonconforming people are also disproportionately represented in the criminal justice system, court-mandated treatment programs, and prisons. While gender nonconforming people have won some legal battles in

the past few years, such as the inclusion of gender identity within anti-discrimination laws, the courtroom remains a daunting forum for gender nonconforming people seeking aid or redress. Due to bias within the legal system, even matters as simple as a name change can be unexpectedly problematic. Gender nonconforming people frequently need to access basic legal services that are sensitive to their particular concerns in order to receive public benefits to which they are entitled; access safe housing or homeless shelters; challenge discrimination; access non-discriminatory health care; obtain legal name changes; change their gender designations on official documents; and advocate for better conditions within prisons.” *Id.*

C. Housing Discrimination

1. A reported 11,000 transgender New Yorkers have been denied housing due to anti-transgender bias. Jody L. Herman, The Williams Institute at UCLA, The Cost of Employment and Housing Discrimination against Transgender Residents of New York, (2013), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-NY-Cost-of-Discrimination-April-2013.pdf>
2. The New York State Human Rights Law Prohibits discrimination on the basis of actual or perceived sex, sexual orientation and disability in housing. N.Y. Exec. Law §296.
3. Federal law provides some measure of protection for LGBT clients.
4. Federal Fair Housing Act, 42 U.S.C. § 3602
 - a. Housing providers cannot “make unavailable or deny a dwelling to any person because of . . . sex” (42 U.S.C. § 3604).
 - b. It does not explicitly prohibit discrimination on the basis of sexual orientation or gender identity.
 - c. The United States Department of Housing and Urban Development (HUD), however, interprets the prohibition on sex discrimination to bar discrimination against someone because they are transgender. This is consistent with an increasing number of courts interpretations of federal sex discrimination provisions.
 - i. U.S. Dept. of Housing and Urban Development, Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 24 C.F.R. §§ 5, 200, 203, 236, 400, 570, 574, 882, 891, 982, (2012)
 - ii. Prohibits discrimination on the basis of gender identity, sexual orientation, or marital status in HUD funded housing programs
 - iii. “Privacy” Exception: Shelter with “dormitory-style” sleeping and bathroom facilities (i.e. the residents share the bathrooms and all sleep in the same area) can limit its housing services to one gender.
5. Shelters that house victims of domestic violence (DV)
 - a. Many DV programs, including shelters, qualify as a “public accommodation”. The Violence Against Women Reauthorization Act of 2013,

Pub. L. No. 113-4 (VAWA 2013) has a Non-Discrimination Provision that prohibits anti-LGBT discrimination in DV shelters and programs that receive covered Office on Violence Against Women (OVW) funding on or after Oct 1, 2013. *See* FAQ's for the Non-Discrimination Grant Condition (released April 9, 2014): <http://ojp.gov/about/ocr/pdfs/vawafaqs.pdf>.

- b. Federal Fair Housing Act (FHA): Residential DV programs can qualify as a “dwelling” for purposes of the FHA. (42 U.S.C. § 3602[b]).
- c. DV programs that receive federal funding must provide shelter to LGBTQ individuals.

D. Employment Discrimination

1. Title VII is a federal law that prohibits sex discrimination in employment. 42 U.S.C. §2000e et. seq. Does not contain express prohibition of discrimination based on sexual orientation or gender identity.

- a. Historically, sex has not been interpreted to include sexual orientation, leave employees who face discrimination because of their sexual orientation without a federal legal remedy. *See, e.g. Simonton v. Runyon*, 232 F3d 33 (2d Cir. 2000).
- b. Sex stereotyping discrimination is actionable under Title VII, however. Depending on the facts of the situation, instances of discrimination against LGBT people may be actionable under sex stereotyping theory.

- i. For example, in *Veretto v. U.S. Postal Service*, the Equal Employment Opportunity Commission (EEOC) held that a Postal Service Employee who was harassed by a co-worker after announcing his marriage to a man stated a claim under Title VII. The agency found the complainant alleged that his harasser was “motivated by the sexual stereotype that marrying a woman is an essential part of being a man, and became enraged when Complainant did not adhere to this stereotype by announcing his marriage to a man in the society pages of the local newspaper. In other words, Complainant alleges that [the harasser’s] actions were motivated by his attitudes about stereotypical gender roles in marriage.” *Veretto v. U.S. Postal Service*, EEOC Appeal No. 0120110873 (July 1, 2011).

- c. Unlawful sex discrimination includes discrimination against someone because he or she is transgender. *See, e.g. Schorer v. Billington*, 577 F.Supp.2d 293 (D.D.C. 2008); *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012).

- i. While the facts in *Schorer* supported a sex stereotyping claim, the court found that discrimination against someone for being transgender is sex discrimination under the plain language of the statute. In other words, sex stereotyping type proof is not necessary for a person who faces discrimination for being transgender to state a claim under Title VII.
- d. Title VII covers employers who have 15 or more employees.
- e. A person who has experienced discrimination has 300 days to file a charge with the Equal Employment Opportunity Commission.

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- i. One must file an EEOC charge and receive a right to sue letter before filing suit in federal court.
2. Executive Order prohibiting identity discrimination against LGBT employees of federal contractors:
 - a. Further Amendments to Executive Order 11478, Equal Employment Opportunity In the Federal Government, And Executive Order 11246, Equal Employment Opportunity, (July 21, 2014).
 - b. Express protections for transgender employees (“gender identity”).
 - c. Implementing regulations to be promulgated by Secretary of Labor.
3. New York State Law
 - a. The New York State Human Rights Law prohibits discrimination on the basis of sex, sexual orientation and disability, among other protected statuses. N.Y. Exec Law §296(1)(a).
 - i. Sexual Orientation is defined as “heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived.” N.Y. Exec. Law §292(27) .
 - ii. The Law does not expressly protect against transgender people. The sex and disability provisions bar discrimination against someone for being transgender.
 - a) Sex provision “Case law supports the view that a transgendered person states a claim pursuant to New York State's Human Rights Law on the ground that the word “sex” in the statute covers transsexuals. *Rentos v. Oce–Office Systems*, 1996 WL 737215 (SDNY 1996); *Richards v. United States Tennis Assn.*, *supra*, 93 Misc.2d 713; *see, Maffei v. Kolaeton Indus., Inc.*, *supra*, 164 Misc.2d 547; cf., *McGrath v. Toys “R” Us*, 3 NY3d 421, 434–35 (2004); *Hispanic AIDS Forum v. Bruno*, *supra*, 16 AD3d 294.” *Buffong v. Castle on Hudson*, 12 Misc. 3d 1193(A), 824 N.Y.S.2d 752 (N.Y. Sup. Ct. 2005).
 - b. Disability Provision - Gender Dysphoria, formerly Gender Identity Disorder, fits within State Human Rights Law definition of disability. *See, Doe v. Bell*, 754 N.Y.S. 2d 846 (N.Y. S. Ct. 2003). A transgender who has such a diagnosis may use it as a basis for a disability discrimination claim and/or reasonable accommodation.
 - i. This is the opposite of the American’s With Disability Act, which expressly excludes being transgender as a disability. 42 U.S.C. § 12211(b)(1) (1997).
 - c. State Human Rights Law covers employers with 4 or more employees.
 - d. Employees have 1 year to file a charge with The New York State Division of Human Rights or can file a complaint in court, where the statute of limitations is 3 years.
4. New City Human Rights Law

- a. Prohibits discrimination in employment based on sexual orientation and gender. NYC Admin. Code §8-107.
 - i. Sexual orientation is defined as “heterosexuality, homosexuality or bisexuality.” NYC Admin. Code §8-102(20).
 - ii. Explicit protections for transgender employees. Gender is defined to include “actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.” NYC Admin. Code §8-102(23).
- b. New York City Commission on Human Rights guidance indicates that refusing to use a transgender employee’s preferred name and pronouns, follow the dress-code or uniform corresponding to the employee’s gender identity may be evidence of discrimination.
<http://www.nyc.gov/html/cchr/html/publications/gender-discrimination.shtml>
- c. Access to bathrooms and other sex-segregated facilities:
 - i. Transgender employees should be able to use the facility consistent with their gender identities, just as cisgender employees are able to.
 - ii. Watch out for *Bruno v. Hispanic Aids Forum*, 839 N.Y.S. 2d 691 (N.Y. S. Ct. 2007).
- d. Covers employers with 4 or more employees.
- e. Employees have 1 year to file a charge with The New York City Commission on Human Rights or can file a complaint in court, where the statute of limitations is 3 years.

E. Discrimination and Harassment in Education

- 1. NYS Human Rights Law, NY Exec. Law §296 (private schools).
 - a. In education generally, the NYS Human Rights Law (HRL) protects against discrimination for the following status categories: race, color, religion, disability, national origin, sexual orientation, military status, sex, age, and marital status. NY Exec. Law §296. The statuses most relevant to anti-LGBT discrimination are basis of sex, sexual orientation and disability.
 - b. Until 2012, both public and private schools were considered covered entities under the HRL as either a public accommodation, §292(9), or an “education corporation or association.” §296(4). However, pursuant to a 2012 decision in the Court of Appeals, In the *Matter of N. Syracuse Central Sch. Dist., No. 109* & In the *Matter of Ithaca City Sch. Dist., No. 110*, 973 N.E.2d 162 (N.Y. 2012), the highest court in this state held that the HRL only protects students in covered private schools. This shocking holding determined that our state’s expansive nondiscrimination law does not protect public school students from discrimination at all.
 - c. While “sexual orientation” was added as a protected status category to the NYS Human Rights Law with the passage of the Sexual Orientation

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Nondiscrimination Act (SONDA) in 2002, see NYS Attorney General, Sexual Orientation Nondiscrimination Act, available at <http://www.ag.ny.gov/civil-rights/sonda-brochure> (last visited May 14, 2014), public school students currently do not receive the benefits of that law's broad protections at all. Another statewide gap is the continual failure of the New York State Senate to pass the Gender Expression Nondiscrimination Act (GENDA: A.4226-b [Gottfried]/S.195-b [Squadron]), which would finally add "gender identity and expression" to the NYS Human Rights Law. As noted above, the sex and disability provisions are increasingly construed to prohibit discrimination against someone for being transgender. *See e.g., Doe v. Bell*, 754 N.Y.S.2d 846 (N.Y. Sup. Ct. 2003); *Doe v. City of New York*, 2013 WL 6231398 (N.Y. Sup. Ct., 2013), *Buffong v. Castle on Hudson*, 12 Misc. 3d 1193(A), 824 N.Y.S.2d 752 (N.Y. Sup. Ct. 2005). However, even with the extension of the sex category to transgender students, and even if GENDA were to pass next legislative session, those legal protections would not apply to public schools students because of that same 2012 Court of Appeals decision.

2. NYS Dignity for All Students Act, N.Y. Educ. Law §10-18 (2010).
 - a. New York's Dignity for All Students Act (DASA) is designed to prevent bullying, harassment, and discrimination in public primary and secondary schools and is inclusive of LGBT students, including transgender and gender nonconforming students. Despite its usefulness in promoting better school nondiscrimination policies, DASA does not actually provide a private right of action for complainants. N.Y. Educ. Law §10-18. As a result, students and parents cannot file a complaint of discrimination in either a court or with an administrative agency to hold school districts accountable when they fail to do what this law requires of them. It also does not cover "private, religious or denominational educational institutions." N.Y. Educ. Law §17.
3. Local Laws
 - a. Generally: Many cities and counties in New York have passed local nondiscrimination laws and ordinances that do include sexual orientation and gender identity and expression. However, these reforms (though important steps) protect only a handful of the state's public school students and generally are nowhere near as comprehensive as the HRL. The Williams Institute at UCLA, Local Laws and Government Policies Prohibiting Discrimination Based on Gender Identity in New York, (2013), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Liebowitz-NY-local-laws-Jun-2013.pdf> (local laws include: New York City, City of Rochester, City of Brighton, Town of Rhinebeck, Suffolk County, City of Buffalo, City of Ithaca, Tompkins County, Albany County, Westchester County, City of Binghamton, City of Syracuse).
 - b. NYC Human Rights Law, N.Y.C. Admin. Code § 8-107. The New York City Human Rights Law does include sexual orientation and gender identity and

expression, N.Y.C. Admin. Code § 8-102(23), and does cover the city’s public school students. § 8-102(8).

4. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a).
 - a. Title IX states that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” 20 U.S.C. § 1681(a).

Although LGBT students are not explicitly referenced in the text of the law, there have been many recent cases as well as administrative guidance from Title IX’s enforcement agency confirming that Title IX protects LGBT students against illegal discrimination.

- b. Case law

There is growing federal trend confirming that the “sex” protected status category includes gender identity and expression in the employment contexts. At least 6 federal circuits and several federal agencies, including the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor (see above), have issued opinions to that effect

- i. *See Smith v. City of Salem*, Ohio, 378 F.3d 566, 575 (6th Cir. 2004) (holding that “discrimination against a plaintiff who is a transsexual – and therefore fails to act/or identify with his or her gender” is illegal sex discrimination under Title VII); *see also Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000) (holding that the definition of “sex” under federal non-discrimination laws includes both biological differences between men and women and failure to “conform to socially prescribed gender expectations”); *see also Rosa v. Park West Bank & Trust Co.*, 214 F.2d 213 (1st Cir. 2000) (holding that a transgender loan applicant refused a loan because of her gender identity/expression may bring a sex discrimination claim under the Equal Credit Opportunity Act, a statute construed consistently with Title VII); *see also Glenn v. Brumby*, 663 F.3d at 1317 (11th Cir. 2011) (holding “discrimination against a transgender individual because of her gender-nonconformity is sex discrimination” under the Equal Protection Clause of the U.S. Constitution’s 14th Amendment); *see also Schroer v. Billington*, 577 F. Supp. 2d 293, 308 (D.D.C. 2008) (holding “gender transition” is actionable per se sex discrimination under Title VII).
 - ii. This is significant for education equality because Title VII of the Civil Rights Law (which provides anti-discrimination protection in employment) jurisprudence is authoritative in a Title IX analysis. *Gossett v. Okla. Ex rel. Bd. Of Regents for Langston Univ.*, 245 F.3d 1172, 1176 (10th Cir. 2001)(“courts have generally assessed title IX discrimination claims under the same legal analysis as Title VII claims”).
 - c. U.S. Dept. of Education Office for Civil Rights Guidance

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- i. The U.S. Department of Education Office for Civil Rights (OCR), which is the administrative agency that enforces Title IX, recently released written guidelines conforming that Title IX protects “lesbian, gay, bisexual and transgender students” from sex discrimination. U.S. Dept. of Ed Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence, (April 29, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.
- ii. OCR began showing its support for LGBT students publicly as early as 2010 in a “Dear Colleague Letter”, which is a guidance document designed to clarify schools’ obligations under Title IX. This Dear Colleague Letter states:
 - a) “Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination. When students are subjected to harassment on the basis of their LGBT status, they may also, . . . be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target’s actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment.” “Dear Colleague” Letter of Russlynn Ali, Ass’t Sec’y for Civil Rights, 7 (Oct. 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.
- iii. Since the 2010 Dear Colleague Letter, OCR also entered into a Resolution Agreement requiring the Arcadia, California Unified School District to implement inclusive policies for transgender and GNC students and to grant a male-identified transgender middle school student access to male-gendered sex-specific facilities consistent with his gender identity instead of his biological sex. DOE OCR, Arcadia Unified School District Resolution Agreement, 3 (July 2013), available at <http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf>. This Resolution Agreement can be cited as persuasive authority confirming covered school districts’, colleges’, and universities’ obligations under Title IX in future administrative complaints filed with OCR that allege Title IX violations. DOE OCR, Case Processing Manual, available at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html> (last visited May 20, 2014).

5. City & State Model Policies & Guidelines on Gender Inclusion

Schools with such gender identity-inclusive policies report better educational outcomes, less discrimination, and fewer incidents of bullying. J. G. Kosciw ET AL., GLSEN,

The 2011 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools, 58, 75, 77 (2012), available at <http://glsen.org/sites/default/files/2011%20National%20School%20Climate%20Survey%20Full%20Report.pdf>.

a. In March 2014, to close the gaps in how other its city law, state and federal laws in the education context are implemented, the New York City Department of Education (NYC DOE) took a proactive stand to promote equality for transgender and gender nonconforming students and released its “Transgender Student Guidelines.” This practical policy provides directives on many issues that schools need to address for this population of students. For example, NYC DOE’s policies require school staff to address students “by the name and pronoun corresponding to their gender identity that is consistently asserted at school” without a court-ordered name or gender change as a prerequisite. Moreover, they also provide policies on “Restroom and Locker Room Accessibility” that mandate access to those spaces based on gender identity. NYC Dept. of Ed., Transgender Student Guidelines, (2014), available at <http://schools.nyc.gov/RulesPolicies/TransgenderStudentGuidelines/default.htm> (last visited May 12, 2014).

b. Despite the NYC DOE policy, New York State has not yet created or implemented statewide policies that explicitly protect transgender and gender nonconforming students from discrimination and outline resources available to them during the gender transition process. Such guidance is not novel. In fact, several other states and school districts, including Massachusetts, Connecticut, Vermont, and school districts in California , have adopted policies explicitly addressing the following topics on how to support transgender and GNC students

- i. Access to sex-segregated spaces and facilities (including bathrooms/locker rooms) based on gender identity/expression;
- ii. Gender-markers and students’ names on unofficial and official school records;
- iii. Bullying, harassment, discrimination and legal protections;
- iv. School Policies (including dress code);
- v. Privacy;
- vi. Training.

c. Examples of policies in other cities and states:

- i. Massachusetts Department of Elementary and Secondary Education, Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment, (2012), available at <http://www.doe.mass.edu/ssce/GenderIdentity.pdf>
- ii. Connecticut Safe School Coalition, Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws, (2011), available at

http://www.ct.gov/chro/lib/chro/Guidelines_for_Schools_on_Gender_Identity_and_Expression_final_4-24-12.pdf

iii. Los Angeles Unified School District, Transgender and Gender Variant Students -Ensuring Equity and Nondiscrimination, (2011), available at http://www.capradio.org/media/1008486/1231_transgender.pdf

F. Health Care

1. Description of Transgender health care needs
 - a. Transgender communities experience widespread discrimination in healthcare settings. This includes both interpersonal discrimination by healthcare providers and systemic discrimination in lacking access to adequate healthcare, as a result of significantly higher experiences of poverty and extreme poverty, homelessness, unemployment, and inability to acquire appropriate identity documents.
 - b. Information and statistics on discrimination documented in the National Transgender Discrimination Survey, available at:
http://www.thetaskforce.org/downloads/reports/reports/ntds_summary.pdf
2. Federal
 - a. Medicare Policy Change
 - i. On May 30, 2014, the U.S. Department of Health and Human Services (HHS) Departmental Appeals Board overturned a categorical exclusion on gender-affirming surgeries for transgender people using Medicare. The standard of care will now be determined on a case-by-case basis of whether surgery is deemed “medically necessary.”
 - a) Full language of new policy available at:
<http://www.glad.org/current/item/medicare-to-update-healthcare-standards-for-transgender-patients>
 - b. Patient Protection and Affordable Care Act (ACA) §1557.
 - i. Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability under “any health program or activity, any part of which is receiving Federal financial assistance ... or under any program or activity that is administered by an Executive agency or any entity established under [Title I of ACA].”
 - ii. If an individual has been discriminated against on the basis of sex, they are protected by Section 1557, and may file a complaint with the HHS Office of Human Rights. Section 1557 is the first Federal civil rights law to prohibit sex discrimination in healthcare.
 - a) Full language of §1557, available at:
<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap157-subchapVI-sec18116.htm>
 - b) Procedure for filing complaints, available at:
<http://www.hhs.gov/ocr/civilrights/understanding/section1557/>

3. State Level Advocacy

- a. NYS Medicaid exclusion, 18 NYCRR 505.2(l) was passed in 1998 (prior to which reassignment procedures were covered under Medicaid). Passed over the opposition of two doctors with a scant regulatory record based on greatly outdated science.
- b. Private plans contain vast exclusions, along similar lines, barring all treatments for gender reassignment. Presumably derived from or informed by the Medicaid provision. Some plans cover trans health.
- c. The rollout of the Affordable Care Act has vastly restructured public and private health options to make a very confusing and complicated landscape. However, due to anecdotal research conducted by the Health care for All New York Campaign, we know that most providers on the marketplace retain exclusions and the Medicaid exclusion still stands.
- d. There are many options available for challenging Medicaid and private health exclusions:
 - i. Appeals process with each private health provider
 - ii. For Medicaid recipients, there is option of article 78 proceeding, or proceeding under NYS Human Rights Laws described above.
- e. SRLP, Legal Aid and Willkie Farr lawsuit
 - i. Complaint, Appendix 6.
 - ii. Comes on the heels of 8 years of advocacy to remove this restriction, through litigation, policy, media, and community organizing.
 - iii. Brings challenges based on federal law and state law.
 - iv. Class action on behalf of all transgender Medicaid recipients, with two lead plaintiffs, both transgender women. Preliminary Injunction requested for one plaintiff due to urgent health care needs.
 - v. Legal theories:
 - a) Supremacy Clause – exclusion conflicts with Medicaid Aid because discriminatory bias is unreasonable limitation on scope of services provided when care is deemed medically necessary.
 - b) ACA – protects against gender identity discrimination. Regulations will be issues in September (we think this is strong argument).
 - c) New York State Constitution.
 - vi. Status of case progress at this point.

V. NAME AND GENDER MARKER CHANGE

A. Is a Court Order Necessary to Change One's Name?

1. In theory, no.
 - a. New York law recognizes the right to change one's name without a court order simply by using the name one wishes to assume for all purposes without the intent to defraud.); *See, e.g., In Re Golden*, 867 NYS 2d 767 (3d Dep't 2008)

2. In practice, yes, for most people.
 - a. Court ordered name change necessary to use one's name for many official purposes, for example on state issued identification documents.
- B. Getting a Court Ordered Name Change**
 1. Civil Rights statute governs. NY Civ. Rights Law §§ 60- 64-a.
 2. Basic Requirements
 - a. Resident of New York State
 - i. A resident is someone who lives in New York. Includes citizens and non-citizens regardless of immigration status.
 - b. Written petition that contains the information required by N.Y. Civ. Rights Law §61. *See*, Appendix 7.
 - c. Petitioner is 18 years of age or older.
 - i. Parent, guardian or next friend can file for petitioner younger than (*see*, 18. N.Y. Civ. Rights Law §60).
 - d. Petition filed in Supreme or Civil Court of the county in which petitioner resides. N.Y. Civ. Rights Law §60. If petition is filed in NYC it may be filed in Supreme Court or Civil Court in any of the 5 boroughs
 - e. Birth certificate attached to the petition.
 - i. N.Y. Civ. Rights Law §60 requires New York born petitioners to file birth certificates. As a matter of practice, required for all petitioners and there is at least one Appellate decisions supporting the requirement. In *Re Beals*, 971 NYS2d 385 (App Term, 1st Dep't 2013)
 - f. The name change is not intended for purposes of fraud.
 3. Limited review by court:
 - a. "if the court to which the petition is presented is satisfied . . . that the petition is true, and that there is no reasonable objection to the change of name proposed. . . the court shall make an order authorizing the petitioner to assume the name proposed." N.Y. Civ. Rights Law § 63 (McKinney)
 - b. Gender history, steps a person has taken to affirm their gender or to transition not lawfully part of the name change review.
 - i. Court cannot require a transgender person to present medical evidence. *See*, e.g., In *Re Golden*, 867 NYS 2d 767 (App Div. 3d Dep't, 2008); In *Re Winn-Ritzenberg*, 891 NYS2d 220, 221 (App Term, 1st Dep't 2009).
 - ii. If judge asks, point out it is not relevant. Have Appellate cases ready.
 - c. Minors – different standard. Name change granted if "substantially promotes" the interest of the minor. N.Y. Civ. Rights Law § 63.
 - i. Still should not need proof of medical steps to transition to meet this standard.
 4. Petitioners who have a criminal record
 - a. Petition must state if the petitioner has been convicted of a crime (felony or misdemeanor) N.Y. Civ. Rights Law §61.

- b. If the petitioner is currently incarcerated or under community supervision for a violent felony additional requirements. N.Y. Civ. Rights Law §61-2.

Practice Tips:

1. *If client is unsure of criminal history, order a rap sheet.*
2. *Unadvisable to go to the police station or court with open warrants. Seek advice on clearing warrants.*

5. Petitioners who are immigrants
 - a. The statute has no requirement regarding citizenship or immigration status.
 - b. Judges often require statement of immigration status and/or service on USCIS. In *re Boquin*, 875 N.Y.S.2d 788 (Sup Ct, Westchester County 2009).
6. Publication
 - a. Statute calls for publication at least once in a newspaper designated by the court. N.Y. Civ. Rights Law §63.
 - i. Write request for publication in a relatively affordable/convenient paper into petition. In New York City, the Irish Echo is an affordable option.
 - b. This requirement “shall” be waived and record of the proceeding sealed if publication would “jeopardize” the person’s personal safety. N.Y. Civ. Rights Law §64-a would present a safety risk to the petitioner.
 - i. In *re E.P.L.*, 891 NYS2d 619 (Sup. Ct. 2009) –Waived publication for transgender petitioner based on finding that publication would make public the fact that he is transgender, which would jeopardize his safety. Court considered data regarding the prevalence of violence against transgender people. There was no showing of past violence against petitioner.
 - ii. Waiver and sealing because of past violence against petitioner. E.g., In *re L.V.*, 768 NYS2d 304 (Civ. Ct. 2003) (history of DV shown by petitioner by the father of the child, including violating criminal orders of protection and a letter from the DA’s office requesting the Court’s assistance to protect the petitioner’s new identity). In *re Doe*, 773 NYS2d 215 (Civ. Ct. 2003) (history of domestic violence shown with current threats from abuser, orders of protection against abuser and criminal history of abuser).

C. Gender Markers and Identity Documents

1. New York courts do not adjudicate gender.
 - a. In some states, for example California, it is possible to get a court order stating that one’s gender is male or female.

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2. Changing the gender marker on gov't issued ID is an administrative process. Each government entity sets its own standard.
 - a. Upon birth, one is assigned a gender, male or female, at birth. That gender is recorded on one's birth certificate.
 - b. Getting identification in a gender different from that on one's birth certificate almost always requires some level of medical intervention:
 - i. Proof of specific medical treatment, for example surgery vs. "appropriate clinical treatment" standard.
 - ii. Myth vs. reality of the medical interventions transgender people want/need to affirm their gender.
 - c. New York City is developing a Municipal Identification Card. It will allow transgender people to obtain identification that reflects who they are without any medical proof.
3. New York State Drivers' License & Non-Driver Identification Card
 - a. Letter on letterhead from medical, psychological or psychiatric provider stating "one gender predominates over the other."
 - b. No proof of any specific medical intervention required.
4. Social Security Card
 - a. A passport, birth certificate or court order in the correct gender OR
 - b. Dr. letter saying the individual has undergone "appropriate clinical treatment" for gender transition. POMS RM 10212.200.
 - c. As of 2013, surgery is no longer required. POMS GN 00301.030.
5. United States Passport
 - a. Physician's letter stating the individual has undergone "appropriate clinical treatment" for gender transition.
6. Employment Authorization Card
 - a. Letter from a physician who has either treated the individual or reviewed his treatment stating the individual has undergone "appropriate clinical treatment."
 - b. Can also use a court order, passport, or birth certificate that reflects one's gender.
 - c. *See* United States Citizenship and Immigration Services, Policy Memorandum: Adjudication of Immigration Benefits for Transgender Individuals; Addition of Adjudicator's Field Manual (AFM) Subchapter 10.22 and Revisions to AFM Subchapter 21.3 (AFM Update AD12-02), PM 602-0061 (April 10, 2012).
7. New York State Birth Certificate
 - a. Until spring, 2014 proof of genital surgery was required. Now the requirement is:
 - i. A completed Application for Correction of Certificate of Birth (DOH-297) ; AND
 - ii. Certified copy of current birth certificate OR notarized statement that the person is 18 years of age or older; AND

- iii. An affidavit from a physician stating the person has had “surgical procedures” “to complete sex reassignment” OR “appropriate clinical treatment for “gender dysphoria” or “transsexualism”
 - b. Likely not available to minors.
- 8. New York City Birth Certificate
 - a. As of July, 2014 proof of surgery is still required: “A new birth certificate shall be filed when . . . (5) The name of the person has been changed pursuant to court order and proof satisfactory to the Department has been submitted that such person has undergone convertive surgery” Administrative Code: 24 RCNY Hlth. Code § 207.05(a)(5) (2005).
 - b. Changes on the horizon?
 - i. Non-litigation advocacy
 - ii. *Prinzivalli v. Farley*, Supreme Court, New York. County, No. 114372/2009 (2009). Article 78 challenge to current requirements.

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Appendix 1

Transgender 101, Sylvia River Law Project.

Transgender 101

I. Introduction

The Sylvia Rivera Law Project: The Sylvia Rivera Law Project (SRLP) works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, and without facing harassment, discrimination, or violence. SRLP is a collective organization founded on the understanding that gender self-determination is inextricably intertwined with racial, social and economic justice. Therefore, we seek to increase the political voice and visibility of low-income people and people of color who are transgender, intersex, or gender non-conforming. SRLP works to improve access to respectful and affirming social, health, and legal services for our communities. We believe that in order to create meaningful political participation and leadership, we must have access to basic means of survival and safety from violence.

Our Organization Goals:

- Free, quality, respectful, affirming legal services for low-income transgender, intersex, and gender non-conforming people.
- End state sanctioned and institutional discrimination, violence, and coercion on the basis of gender identity and expression, which we understand as inextricably related to race and class.
- Build a non-hierarchical collective organization & develop the leadership of our community
- Participate in the larger movement for racial, social, and economic justice that includes gender liberation and prioritizes the issues of those most affected by the systems of oppression under which we live.

II. Terms

The most important thing about terms related to transgender experience is that there is no exhaustive list of terms or singular definition for terms that reflect how people feel and identify. Some terms that may be offensive to some people are affirming for others. Always reflect back the language that people use to talk about themselves.

Definitions Used by SRLP:

Transgender: A term that describes people with a *gender identity* that does not match the sex they were *assigned at birth*.

Assigned Sex at Birth: The male or female identity that infants are assigned at birth. Sex is usually associated with anatomic or physical markers such as: facial hair and body hair, breasts/chest, vagina/penis/genitals, ovaries/ testes/ reproductive organs.

Intersex or Differences of Sex Development: Conditions wherein an individual's reproductive or sexual anatomy and/or a chromosome pattern does not seem to fit typical definitions of male or female as defined by medical providers.

Gender: The World Health Organization defines gender as “the result of socially constructed ideas about the behavior, actions, and roles a particular sex performs”

Gender Identity: An individual's self-conception of their gender.

Gender Expression: How people express their gender identity or gender role.

Transgender vs. Transsexual

“Transgender” is considered a more general umbrella term, while “transsexual” often has a medical connotation. While many trans people identify as transsexual, many may not.

Language Should Be Accurate and Affirming

- Say trans-woman (or transgender woman) to refer to a person who was assigned male at birth and lives and/or identifies as a woman
- Say trans-man (or transgender man) to refer to a person who was assigned female at birth and lives and/or identifies as a man

III. What Does Discrimination Look Like?

Beyond Intent-Based Discrimination:

The law generally recognizes forms of discrimination that focus on individuals and intent. For example, if an individual employer INTENDS to discriminate by not hiring someone because of some characteristic, the law might recognize that behavior as employment discrimination. However, where institutions are set-up in ways to make it impossible for some people to participate or survive in those institutions, the law generally does not recognize that as discrimination. For example, when the state creates barriers to access gender-affirming identification or health care, the law does not recognize those types of systemic practices as discrimination.

Systemic Discrimination:

Because of multiple and intersecting types of systemic discrimination, our communities are disproportionately homeless, incarcerated and unemployed. We face barriers in employment, education, healthcare and housing, and even the remaining shred of entitlements that are supposed to be available to poor people to help them get on their feet

are not accessible to us (e.g. homeless shelters placing trans women with men, discrimination in welfare offices and on workfare job sites, Medicaid excluding trans health care.)

Identity Documents: Post-9/11, identity documents are increasingly vital and regulated for jobs, benefits, housing, access to buildings and travel, and police encounters. Trans and gender non-conforming face the following significant barriers to

- Trans people often have ID's with the wrong name or gender, or no ID at all
- Changing this information can be costly or impossible depending on the ID and what resources you have
- Many government agencies, such as Social Security, require expensive and prohibitive surgeries to change gender that are not covered by insurance, and that most transgender people cannot afford or do not have for other reasons
- Using the wrong ID immediately "outs" you
- Picture doesn't look like you
- Gender marker or name is wrong
- Can (and does) result in humiliation, arrest, violence, or death

Housing: Because of discrimination in employment, rejection by families and discrimination within the housing market, transgender individuals are disproportionately low-income and homeless:

- **Nineteen percent (19%)** of respondents became homeless at some point because they were transgender or gender non-conforming, and 1.7% of respondents were currently homeless.
- For those respondents who had attempted to access homeless shelters, 29% were turned away altogether, 42% were forced to stay in facilities designated for the wrong gender, and others encountered a hostile environment. Fifty-five percent (55%) reported being harassed, 25% were physically assaulted and 22% were sexually assaulted.

Youth: Young people who identify as transgender or gender non-conforming or who are perceived as such, are subjected to discipline and violence by peers and so-called protective systems such as foster care agencies, schools, and doctors.

- People who break gender norms are subject to increased bullying and other forms of harassment in school. Almost **90% of transgender students** report verbal harassment and over 50% report physical harassment within the last year. (GLSEN 2009)
- Transgender individuals are more likely to be kicked out of their homes for expressing their gender. **20 to 40% of homeless youth** are lesbian, gay, bisexual, or transgender (lgbt). (NGLTF 2007)

- In a recent study, 57% of respondents had experienced significant family rejection. **51% of those whose families had rejected them had attempted suicide.** (NTDS 2011)

Work: Transgender people often have a difficult time finding or keeping a job due to bias against gender variance. Additionally, because of the systems of oppression that maintain the power of white non-trans men, experiences of discrimination are increased for transgender people of color.

- **1 in 2 transgender people** surveyed in San Francisco report experiencing employment discrimination. (Transgender Law Center 2003).
- A recent NCTE survey found that **90% of those surveyed experienced harassment** or discrimination at work. (NTDS 2011)

Healthcare: The medical industry disproportionately regulates the care available to and forced upon people who are outside gender norms.

- A recent study found that only approximately 20% of transgender women and 5% of transgender men have the surgeries that are typically required in order to be recognized by government agencies (NTDS 2009).
- Transgender individuals are more likely to be refused medical care because of their transgender status. In a recent survey, 19% of respondents reported being refused care due to their transgender or gender non-conforming status, with even higher numbers among people of color in the survey. (NTDS 2011).
- The rate of suicide for transgender people is almost **40 times higher** than the general population (NTDS 2011).
- Transgender individuals report HIV infection **four times** the national average. (NTDS 2011).

Policing: Transgender communities are disproportionately incarcerated and face extreme violence in the criminal justice system. Police targeting of trans people, the need to participate in survival crimes because employment is so hard to come by, and lack of access to alternatives to incarceration like drug treatment all contribute to this. When trans people are locked up, we are almost always placed in prisons according to birth gender and face systemic harassment, violence, and sexual assault.

- **66% of lgbt youth of color** report being profiled and **harassed** by the NYPD. (FIERCE! 2005)
- **65% of transgender women** and 29% of transgender men in San Francisco have a history of **incarceration.** (San Francisco Department of Public Health, 1999)

VI. General Tips for Working with Trans Communities

Recognition & Affirmation

- Accept and respect every person's gender identity.
- Call people by the words they choose (pronouns, names) in every situation; correct yourself if you make a mistake.
- Avoid using gendered words for anyone until you have a chance to find out which words they want you to use.
- Never out someone as trans without permission.
- Avoid assumptions about sexuality and gender.
- Avoid complimenting trans people based on gender norms too. Compliments can also contribute to sexism and transphobia (for example, complimenting one trans woman on her jewelry and make up but never complimenting another trans woman who doesn't wear jewelry or make up, or complimenting a trans woman only on her jewelry or make up but never on her intelligence or hard work).
- Respect confidentiality, choices, and fluidity of identity.

Institutional Changes

- Make any restrooms gender neutral.
- Hire trans staff and include trans people in leadership roles.
- Put trans-affirming posters or signs on the walls in your office to create a welcoming environment.
- Make sure intake forms allow people to share their identities. Have a blank for gender and make it clear that people can share their preferred names.
- Make trans issues part of your organization's priorities.
- Make sure people don't need to show ID to access your organization's spaces or events.
- Make trans issues part of your organization's priorities. Never add the "T" without doing the work.
- Eliminate any gender specific dress codes (for employees, program participants, or others).

Challenge Individual and Organizational Assumptions

- Learn about and work to dismantle all forms of oppression.
- Examine your own biases and values.
- Be open to criticism from trans people. Listen to concerns about transphobia and take them seriously. This sort of feedback gives you a valuable opportunity to learn and grow.
- Get trans awareness training for people in all roles in your organization—reception, security, director, etc.

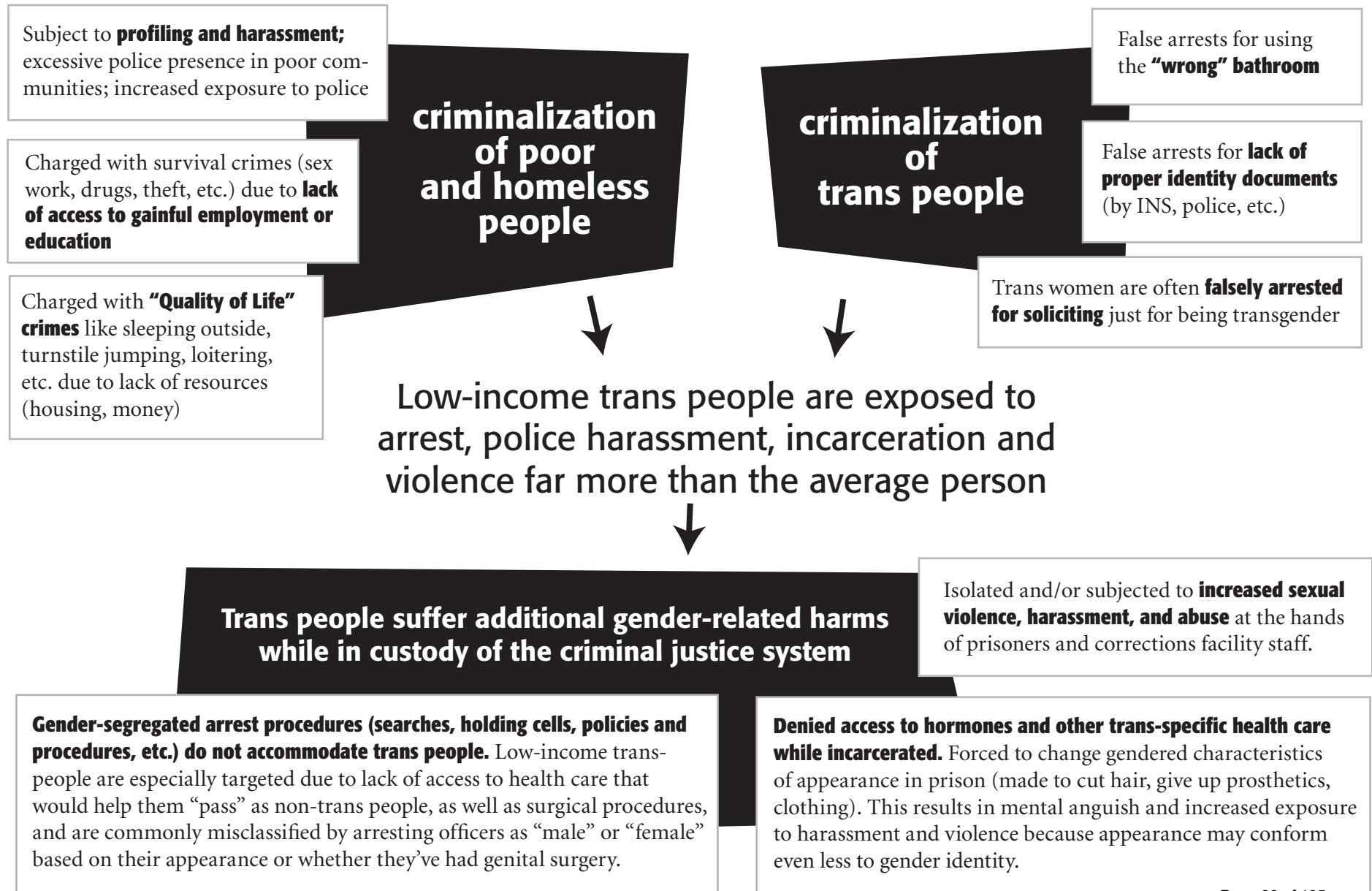
- Do not criticize how masculine or feminine a trans person looks or acts or offer suggestions about how they could look or act more like a man or woman, even if you think you're helping.
- Unlearn gender policing among non-trans people, too (co-workers, family, friends)—avoid holding anyone to gender stereotypes.
- Continue to educate yourself about trans issues through reading, listening, and training.
- Admit what you don't know.
- Don't sensationalize or sexualize trans bodies.
- Avoid inappropriate or invasive questions about trans people's bodies or medical histories—ask yourself, “Is this question/comment really needed for our work together?”
- Take the burden of educating others and addressing transphobia off of trans people (e.g., remind others to use proper pronouns, make a plan for supporting trans people before going into a hostile environment).
- Be an outspoken trans advocate in all contexts.
- Learn about and work to dismantle all forms of oppression, such as sexism, racism, classism, ablism, xenophobia, and heterosexism. All forms of oppression are deeply interrelated and cannot be overcome without also overcoming the others.

Appendix 2

Systems of Inequality: Poverty and Homelessness

SYSTEMS OF INEQUALITY: CRIMINAL JUSTICE

This diagram illustrates how overpolicing and profiling of low income people and of trans and gender non-conforming people intersect, producing a far higher risk than average of imprisonment, police harassment, and violence for low income trans people.



Appendix 3

Serving All Communities

Reprinted with permission from Catherine Sakimura

Sakimura, Catherine, Torres, Daniel et. al., *Serving All Communities: Providing Respectful and Competent Services to Low Income LGBT Clients*, 47 Clearinghouse Review: Journal of Poverty Law and Policy 336 (2014).

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Serving All Communities

Providing Respectful and Competent Services to Low-Income LGBT Clients

BY CATHERINE SAKIMURA,
DANIEL TORRES, AND COLE THALER



Winnie is a lesbian who lives in federally subsidized housing with her two children. Winnie's girlfriend, Silvia, spends nearly every day at Winnie's apartment. Silvia has told Winnie that she should add Silvia to her lease, but Winnie is afraid to ask. The last time she and Silvia were sitting on the porch holding hands, the office manager walked by and gave them a dirty look. Winnie has also found garbage left on her doorstep. Late one night, Silvia had too much to drink and got into an argument with Winnie. Silvia yelled at Winnie and slapped her, and Winnie screamed for help. The next day Winnie found on her door a lease termination notice from the housing authority, saying that her neighbor reported her for causing a loud disturbance at night. Winnie calls her local legal aid office for help; while she dials, she worries that the person who answers the phone will be hostile or homophobic.

Winnie, like all of our clients, wants to feel understood and well represented when she calls on legal aid. To help her meet her goals

and accomplish our institutional mission, we have a responsibility to develop fluency with terms and issues relating to lesbian, gay, bisexual, and transgender (LGBT) people; to create an office environment that is welcoming and accessible for LGBT clients; and to develop inclusive legal, policy, and programmatic strategies. Programs across the country, from California to New York to Georgia, are taking steps to ensure that clients such as Winnie are welcomed and respected.

Why Cultural Competency

Countless low-income LGBT people rely on legal aid organizations to provide them with skilled representation so that they can maintain the basic necessities of life.¹ Recent research shows that "one third of lesbian couples and 21.1% of gay male couples without a high school diploma are in poverty, compared to 18.8% of different-sex married couples."² Nearly one in four children who live with a male same-sex couple and 19.2 percent of children who live with a female same-sex couple are in poverty, compared to 12.1 percent of children who live with a married different-sex couple.³ More than 5 percent of people with annual incomes under \$24,000 identify as LGBT, "a higher proportion than among those with higher incomes."⁴

Beyond the structural injustices that lead to the nation's generally high rates of poverty, LGBT people across every demographic face hurdles that help explain their overrepre-

LGBT people across every demographic face hurdles that help explain their overrepresentation in low-income communities.

sentation in low-income communities. Lack of family or community support may stop LGBT people from relying on the informal safety nets that keep many out of poverty. The refusal of most states to recognize same-sex marriages or other same-sex relationships means that many LGBT people lack the financial security that marriage can provide, including access to health insurance coverage. A lack of explicit bans on sexual-orientation or gender-identity discrimination can create barriers to stable employment and housing. And fears about discrimination and violence by police, courts, shelters, churches, and other authorities make escaping poverty even harder for LGBT people.

Representation of LGBT clients is a natural fit for legal aid organizations, which typically have mission statements devoted to helping the marginalized, fighting for justice, and preserving the dignity of clients. All of these goals are relevant to the needs of low-income LGBT people, who simply seek the same equity and dignity that all of our clients want. Whatever our own identities and beliefs, legal aid staff members have a professional responsibility to serve all clients and communities with knowledge and respect. Every legal aid program undoubtedly has already served LGBT clients even if its staff is unaware of having done so. Just as programs recognize the particular vulnerabilities of

1 See Lisa J. Cisneros & Catherine Sakimura, *Recognizing and Responding to the Needs of Low-Income Lesbian, Gay, Bisexual, and Transgender Clients*, 43 CLEARINGHOUSE REVIEW 515, 518 (March–April 2010).

2 M.V. Lee Badgett et al., *Williams Institute, New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community* (June 2013).

3 *Id.*

4 Gary J. Gates & Frank Newport, *Gallup, Special Report: 3.4 % of U.S. Adults Identify as LGBT* (Oct. 18, 2012).

clients with limited English proficiency, clients of color, elder clients, clients with disabilities, domestic violence survivors, and so on, so, too, should programs recognize that LGBT cultural competency is crucial to our work.

Working to provide competent and respectful services to LGBT clients also helps advocates meet their professional responsibility obligations. Although not considered ethical mandates, the American Bar Association's Standards for the Provision of Civil Legal Aid provide excellent guidelines and best practices for delivery of legal aid.⁵ ABA standard 2.4 on cultural competence states that a "provider should ensure that its staff has the skills, knowledge and resources necessary to provide assistance in a culturally competent manner."⁶ Standard 2.4 provides a framework for serving all clients in a cross-cultural practice. Moreover, it applies with equal force to providing legal aid to LGBT low-income communities.

for legal aid programs. Cultural competency "involves more than an absence of bias or discrimination," as the commentary on standard 2.4 explains. It involves improving the overall provision of legal services for diverse clients and developing respectful practices and responses to their legal problems.

All lawyers are required to provide competent legal services to clients. ABA Model Rule of Professional Conduct 1.1 states that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."⁷ In legal aid practice, serving LGBT clients competently means, at a minimum, staying abreast of the many legal changes affecting the community, being skilled at developing attorney-client relationships, and thoroughly preparing for the representation of LGBT clients in an evolving social, political, and legal landscape. Unless we understand the legal protections

comment on rule 1.3 makes clear that "[a] lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor."⁹ Despite any political unpopularity of LGBT clients, a lawyer must still act with zeal and dedication to their interests.

Given the political and cultural stigma around issues of sexual orientation and gender identity, some individuals and organizations may find that improving services to LGBT clients seems new, unfamiliar, or even uncomfortable. Meeting these challenges and evolving beyond them is part of building a culturally competent and ethical practice. Staff training creates safe spaces for workers to move beyond any initial hesitation or reluctance and to recognize that representation of LGBT clients is simply a component of effective professional service.

In dealing with our own questions, we may need to open ourselves to new understandings and approaches. And when confronted by bias, we may need to find the strength to stand firm on the side of equity. All of this takes courage, trust, collaboration, and commitment. But pushing toward greater justice is also deeply rewarding, keeping our organizations relevant in changing times and allowing us to fulfill our obligation to be zealous advocates on behalf of those we serve.

Creating a culturally competent organization able to provide respectful services to LGBT clients cannot be accomplished in one step or one staff training.

According to standard 2.4, developing client trust and confidence is a fundamental responsibility of legal aid providers. Lack of cultural competency can be a barrier to establishing a relationship of trust and confidence with clients and can influence how the attorney-client relationship is formed. It can also affect client access to legal aid, the delivery of legal information and education to the targeted community, and the quality of the client's representation before adversaries, administrative agencies, and the courts. Developing cultural competency in representing LGBT clients is therefore critical

available to LGBT people and create a space for LGBT clients to discuss their sexual orientations and gender identities with us, we may miss available claims for relief and thus be unable to provide them with competent representation.

Lawyers must also be diligent in their representation of clients. According to ABA Model Rule of Professional Conduct 1.3, "[a] lawyer must act with reasonable diligence and promptness in representing a client."⁸ Facing opposition or backlash for representing an LGBT client can pose a challenge to a lawyer or legal aid organization. But the

Key Elements for Culturally Competent Organizations

Six elements are essential to the development of a culturally competent organization.¹⁰

⁵ See [American Bar Association Standing Committee on Legal Aid and Indigent Defendants, Standards for the Provision of Civil Legal Aid, Standard 2.4](#) (Aug. 2006).

⁶ *Id.* at 56.

⁷ [Model Rules of Professional Conduct](#) R. 1.1 (2013).

⁸ *Id.* R. 1.3.

⁹ *Id.* R. 1.3 cmt.

¹⁰ This discussion of the key elements of culturally competent organizations, as well as the following tips on outreach, intake, and case handling, is based in part on training materials created by the National Center for Lesbian Rights and California Rural Legal Assistance for use in training legal services offices on serving lesbian, gay, bisexual, and transgender clients. For more information about our legal services training project, please contact us (see authors' contact information at the end of this article).

LEADERSHIP AND VISION. The importance of leadership and vision in the development of LGBT cultural competency cannot be overstated. Support from an organization's board and executive director is critical to the success of this effort. One key aspect of leadership is situating LGBT-related work within the same frame as the rest of the organization's mission, vision, and priorities. This forms a context for weaving LGBT considerations through various organizational structures, as well as integrating them with current programming, budgeting, and other priorities. Strong commitment from the organization's leaders is also crucial to countering any push-back or concerns about this work that staff, funders, clients, or community members may raise.

ONGOING TRAINING, NEEDS ASSESSMENTS, AND EVALUATIONS.

Creating a culturally competent organization able to provide respectful services to LGBT clients cannot be accomplished in one step or one staff training. To ensure that LGBT-inclusive work becomes institutionalized within your organization, the staff must have periodic staff training sessions that include substantive LGBT-related legal information and policy updates. Keep your finger on the pulse of the community through periodic needs assessments conducted with LGBT clients. Ultimately you will also want to check with staff and clients about how well you are meeting your cultural competency objectives. This should be done by surveying clients and your organizational staff through evaluations. The feedback you receive will become part of your ongoing organizational growth and improvement.

WELCOMING OFFICE CLIMATE. Your physical space, resource materials, and staff interactions all must convey a message of respect and inclusion. You must have a welcoming attitude not only while doing outreach to LGBT clients but also for your interactions with all clients, LGBT and non-LGBT alike. Non-LGBT clients may refer LGBT people

for assistance or may have close friends or family members who are LGBT, and a client you think is not LGBT may later come out to you. A welcoming environment presents a message to the broader community—that your organization respects the dignity and diversity of the LGBT population.

RESPECTFUL INTAKE SYSTEMS. As a first point of connection for many clients, respectful intake processes are for building client trust, as well as enabling advocates to obtain critical information about the nature of a client's situation and legal needs. For both these reasons, intake procedures need to be structured in a way that allows each client to share relevant information about the client's sexual orientation and gender identity (as well as other aspects of the client's life) in an inclusive and confidential manner.

sure to review your existing outreach and messaging materials for LGBT inclusiveness. Having materials that are specific to LGBT people—for example, for use at LGBT Pride events—helps. Also, ensure that your general outreach materials and any general community presentations (in all languages) use LGBT-inclusive language.

Work on all of six of these key elements to ensure that you are effectively and respectfully serving low-income LGBT clients. We discuss specific strategies for three of them: outreach, intake, and case handling.

Outreach to LGBT Clients

Organizations committed to LGBT cultural competency should consider ways to engage in active outreach to LGBT communities. Active outreach will help publicize your

Be prepared to talk about issues of sexual orientation and gender identity in a professional, nonjudgmental way that respects all clients at all intake stages.

INCLUSIVE CASE HANDLING PRACTICES.

Case handling practices should also be structured with an eye toward inclusivity and a commitment to meeting LGBT needs. In particular, advocates must set up thoughtful systems of organizational communication, information sharing, and record keeping that capture relevant information while protecting each client's dignity and privacy. Advocates must bring relevant LGBT-related legal knowledge to their handling of client cases, and the organization must demonstrate respect for the rights of LGBT people in all interactions with the courts.

ACTIVE OUTREACH AND MESSAGING.

To complement your organization's internal LGBT cultural competency work, active outreach and messaging is needed to connect you with potential clients who are LGBT and may need your services. Be

work with LGBT clients and is a way to share relevant resources. It will also send a welcoming message to LGBT people and their family members who may need your services. Because of past and ongoing experiences of discrimination or invisibility, many LGBT individuals who need access to legal aid may fear that they will not be welcome or safe within our agencies or in the justice system—and may therefore not seek out the help they need. Outreach is key to turning this dynamic around by broadening general awareness of legal aid among low-income LGBT populations.

Organizations can use these strategies to reach prospective LGBT clients:

1. SHOWCASE YOUR COMMITMENT.

Include a brief statement or section on your website and written outreach brochures,

flyers, or other materials to highlight the organization's inclusiveness, expertise, and concern for LGBT issues. Including some LGBT-specific information and examples in your organization's general presentations or brochures is particularly helpful. At any of your presentations, keep in mind that there is likely an LGBT person or an LGBT person's close friend or family member in the audience.

You can make your office space welcoming by hanging posters or signs on LGBT issues in your waiting area or outside your office along with other materials and information. If you have materials in your waiting area, include some LGBT-specific ones. If you have lists of targeted populations on any flyers or brochures for your organization, be sure to include LGBT people in those lists. If you give information in other languages, be sure to include LGBT content in each language.

2. SPREAD THE WORD. Reach out directly to LGBT communities with information about your services and expertise. Research LGBT populations in your area—who they are, what legal needs they may have, how you might best connect with them. Spread the word about your work through relevant publications, word of mouth, and organizational connections, as well as by supporting and attending LGBT community events.

3. PARTNER WITH LGBT ORGANIZATIONS.

Partnering with LGBT organizations and community groups is crucial to building successful outreach. Research potential partners and create genuine, mutually beneficial relationships with them. Be an ally, share your resources, and open yourself to learning from their experiences. Draw on your community partners' relationships with LGBT individuals to increase visibility and attract potential legal aid clients. Some groups you may consider partnering with are culturally based LGBT groups, policy organizations, political groups, safe-school organizations, faith-based groups and open and affirming church-

es, LGBT health and wellness projects, LGBT community centers, LGBT youth and family organizations, and LGBT employee groups.

At the larger community level, show your commitment to LGBT inclusiveness and equality by supporting and participating in LGBT community events, such as annual LGBT Pride parades, organizational fund-raisers, film screenings or festivals, or LGBT cultural events.



4. SPEAK OUT ON LGBT RIGHTS. Show your solidarity with LGBT communities by signaling your support for civil and human rights. For example, if an LGBT-bullying incident or hate crime surfaces in your community, you could conduct legal rights workshops to educate community members on the issues and to reach other potentially affected victims.

Intake Systems

Many legal aid organizations do not currently inquire about a client's gender identity or sexual orientation. This, however, can make serving LGBT clients difficult. The best practice is to incorporate questions about gender identity and sexual orientation into your standard intake form and allow clients to self-identify. For some organizations, changing the standard intake form may not be possible. The next best practice is to include these questions in the intake interview for all prospective clients. At a minimum, every advocate and intake

worker must be trained and prepared to have respectful discussions about sexual orientation and gender identity with clients.

WHY ASKING QUESTIONS ABOUT SEXUAL ORIENTATION AND GENDER IDENTITY MATTERS. Clients must be able to talk about sexual orientation and gender identity with you. Asking about sexual orientation and gender identity sends an affirming and welcoming message to LGBT clients. And by allowing clients to

self-identify their gender, our advocates can then use appropriate pronouns, titles, and chosen names to address and advocate for them appropriately and respectfully.

Another reason why we ask our clients to self-identify is directly related to legal counseling. We need the information to help us better understand our clients' circumstances, determine whether they may have legal claims related to sexual orientation or gender identity, and openly ask questions to help develop the legal theories of their cases. Self-identifying on an intake form or in the intake interview allows each client to disclose the client's identity to us in a direct, matter-of-fact way. The advocate can then ask questions and explore whether the client's identity is tied in any way to the client's legal issues. While our clients may not always come to us with legal problems that appear at first glance to be tied to LGBT issues, we must know how our clients self-identify

because clients often do not realize that they may have legal protections as LGBT people.

For example, a client comes to your office with what appears to be an unemployment insurance denial. The client explains that he was asked to resign from work voluntarily because he was truant. The employer challenges his application for benefits because it argues that the client quit work voluntarily and without good cause. After several interviews, the client discloses that he is gay. The advocate then explores whether the client suffered harassment at work. Indeed he had been harassed because of his gender presentation, and he was not aware that harassment based on failure to conform to stereotypes about gender could be illegal under Title VII. He was aware that the harassment caused him depression and in turn caused him to be late to work, but he did not know that the harassment was relevant to his

the client's sexual orientation, the advocate could ask the client whether the client had listed a domestic partner or same-sex spouse on any employee benefit forms, thereby giving the employer actual knowledge about the client's sexual orientation. Asking for information about the client's sexual orientation and about a same-sex spouse or partner on the intake form or up front in the intake interview can help the advocate quickly investigate and collect evidence for the case.

For some cases, the need to gather information and rule out LGBT discrimination can be extremely urgent. Take, for example, eviction cases. If a client gets a three-day notice to pay rent or quit, the advocate needs to be able to investigate quickly whether the eviction was based on discrimination. If the client discloses an LGBT identity, the advocate can explore whether LGBT discrimination played a role in the eviction case.

their lived gender markers and names.

Counseling on this topic is part of an overall advocacy strategy for transgender clients.

HOW AND WHERE QUESTIONS ABOUT GENDER IDENTITY AND SEXUAL ORIENTATION SHOULD BE ASKED.

In order to get information about sexual orientation and gender identity, we must be able to preserve the client's right to confidentiality. The context in which our clients give us this information must also be kept private. Intake forms and interviews should be completed in private in such a way that the information is not shared with third parties. Considerations of privacy should already inform an organization's procedures because clients often disclose confidential information in forms and interviews.

One approach to asking questions about gender identity and sexual orientation could involve asking these questions in the section inquiring about other demographic data. Under a section inquiring about a client's age, race, and so on, you could ask the client to self-identify gender and sexual orientation in the following manner:

Gender (check all and any that apply):

I consider myself:

- ☐ Male
☐ Female
☐ Transgender male
☐ Transgender female

¹¹

["Transgender" means a person whose gender identity is different from the gender assigned at birth.]

Sexual Orientation:

I consider myself:

- ☐ Straight/Heterosexual
☐ Bisexual
☐ Gay
☐ Lesbian

¹¹ This blank space may be used by a client to self-identify however the client chooses.

The best practice is to incorporate questions about gender identity and sexual orientation into your standard intake form and allow clients to self-identify.

case. The harassment he suffered and his employer's failure to take corrective action were good cause to quit the job. His seemingly voluntary termination of employment was a constructive discharge. Had the client been asked about his sexual orientation up front, the advocate could have explored whether the client was discriminated against at work and developed a legal theory at a much earlier phase of the case. Getting this information early not only helps the advocate develop a more coherent legal theory of the case but also can matter in cases where a deadline to file is quickly approaching.

Questions about sexual orientation may also inform the type of investigation needed for the case. Take the above example. If the employer denied having knowledge about

Inquiring about a client's gender identity opens up a discussion about strategies for preventing discrimination. For a transgender client, you may need to explore whether the client has identity documents that align with the client's gender identity and lived name. This may lead to additional legal counseling around options and strategies for presenting the client's identity before administrative agencies and courts.

A client's gender identity may also lead the advocate to advise the client to obtain a court-ordered legal name and gender change. Many transgender clients are not aware of the legal requirements for obtaining such changes. Instead many suffer harassment and "outings" in their daily transactions with the world because their identity documents do not contain

By giving clients the opportunity to self-identify sexual orientation and gender, we open up an attorney-client relationship that allows for a more effective investigation, thorough counseling, and impactful advocacy strategy. By asking clients to self-identify sexual orientation and gender, we can better serve them.

INTAKE PRACTICE TIPS. The following are practical tips for respectful and helpful intake communication.

1. ASK ABOUT A CLIENT'S SEXUAL ORIENTATION OR GENDER IDENTITY JUST AS YOU WOULD ASK ANY OTHER QUESTIONS ABOUT THE CLIENT'S LIFE OR IDENTITY.

When collecting information from a client, include questions about the client's sexual orientation and gender identity, along with questions about other background characteristics.

Do not create a stigma when asking these questions by stating that the questions are "personal questions" or may be "sensitive." Telling a client that questions about sexual orientation or gender identity are going to be too personal or sensitive sends the message that there is something wrong with being LGBT or that you are uncomfortable with LGBT clients. In reality, your entire intake sheet may involve personal or sensitive questions. Questions about a client's race, income, citizenship, and experience with domestic violence, or other similar questions, are all personal and sensitive in nature. But saying they are so does not help a client share this information with you. Instead, at intake's very beginning, let the client know that the client's information will be kept confidential and is to be used for purposes of providing needed services, and then make sure that that you keep the information confidential according to your organization's protocol.

2. USE LANGUAGE THAT DOES NOT IMPLICITLY ASSUME THE CLIENT'S SEXUAL ORIENTATION OR GENDER IDENTITY. Using inclusive language that does not assume the gender of your client or your client's significant other sends a message that your client can talk to you

Include a brief statement or section on your website and written outreach brochures, flyers, or other materials to highlight the organization's inclusiveness, expertise, and concern for LGBT issues.

safely about the client's sexual orientation or gender identity. Use such inclusive language with all clients, not just the ones whom you think may be LGBT—you cannot tell by looking at a client what the client's sexual orientation or gender identity is. For example, ask a client "Are you in a relationship?" instead of "Do you have a boyfriend?"

3. BE PREPARED TO TALK ABOUT ISSUES OF SEXUAL ORIENTATION AND GENDER IDENTITY IN A PROFESSIONAL, NONJUDGMENTAL WAY. Whatever your intake method, be sure that you and your colleagues are prepared to talk about issues of sexual orientation and gender identity in a professional, nonjudgmental way that respects all clients at all intake stages. A client may not initially be comfortable discussing gender identity or sexual orientation with intake staff or may not realize that such information could be relevant to the client's legal case. Some LGBT clients may disclose aspects of their sexual orientation or gender identity after the initial interview, or they may have legal issues that require staff to ask further questions about identity, family life, or medical history and needs. Being prepared to ask about and receive this information without making assumptions about a client's sexual orientation or gender identity at the outset, and being able to talk with a client about the client's options without judgment, are ways to maintain a respectful and professional environment for LGBT clients.¹²

While understanding the basic terminology related to sexual orientation and gender identity, you must allow each client to describe the client's own identity even if the

term that the client uses may not seem to match your understanding of the term. For example, a woman who is in a relationship with another woman may identify as gay instead of lesbian, or she may identify as bisexual. Persons can identify as transgender regardless of how they express their gender and whether or not they have had any surgery or medical treatment. We do not need to inquire into a client's life, dating practices, or medical history to understand how the client self-identifies—all we need to know is which terms the client wishes to use.

Clients may also identify as queer, gender-queer, or by other terms you might not commonly use or hear. If you work with clients in other languages, you should connect with native speakers of those languages who work with the LGBT community to find out what terms are considered appropriate and respectful.

4. BE PREPARED TO GIVE A CLEAR EXPLANATION IF A CLIENT ASKS WHY YOU ARE ASKING ABOUT SEXUAL ORIENTATION AND GENDER IDENTITY.

If the client does ask why you are inquiring about gender identity and sexual orientation, you can explain that you serve a diverse community and want to do a better job of serving the community. You can also note that you are looking for ways to improve your outreach and services to the LGBT community and that a person's gender identity or sexual orientation might have some legal relevance to certain claims. You can explain to the client that giving this information may help you decide on the best strategies and legal theories and helps you avoid making decisions or recommendations based on assumptions.

¹² For more detailed best practices on how to ask people about their sexual orientation especially, see [Sexual Minority Assessment Research Team \(SMART\), Williams Institute, Best Practices for Asking Questions about Sexual Orientation on Surveys](#) (Nov. 2009).

Case Handling

Ensure that your systems and policies for handling cases are set up to allow you to serve LGBT clients respectfully. Making the following small adjustments to your case management procedures can help you provide consistently respectful services.

1. DEVELOP SYSTEMS TO ASK ABOUT, MAKE NOTE OF, AND USE CLIENTS' PREFERRED OR LIVED NAMES.

Ask each client, especially your transgender clients, what name the client uses in everyday life. If a client has a legal name on a birth certificate that is not used in daily life, you may want to enter the client's lived name in your case management system with a case alert that the client has another name and what that name is. As a best practice, use the client's lived name on files, intake forms, and case management systems so that when the client calls or comes in, the front desk and the advocate are in the habit of using the client's lived name.

2. ENSURE THAT STAFF MEMBERS HAVE ACCESS TO CLIENT INFORMATION AS NECESSARY.

Have a process in place for ensuring that everyone who interacts with a client knows the client's lived name or gender if either differs from the client's legal name or gender. Also, have processes in place to share relevant information about a client's sexual orientation and gender identity with those who are working on the case so that the client does not need to keep repeating them.

3. DEVELOP SYSTEMS OF RECORD KEEPING THAT ARE RESPECTFUL OF LGBT CLIENTS.

Your case management system should be set up to allow a same-sex partner to be listed as a client's partner, and staff should be instructed to note any legal relationships between the client and the client's partner. What can be legally significant is if the client and partner are legally married, in a civil union, or in a domestic partnership—even if the state they live in does not recognize their relationship.

Case files for transgender clients should be labeled with the client's lived name, even if it is not the client's legal name,

and the client's lived gender should be marked in the demographic data.

4. DEMONSTRATE RESPECT FOR CLIENTS AND THEIR IDENTITIES IN INTERACTIONS WITH THE COURT.

Be sure to show respect for LGBT clients and their identities in all interactions with the court. One way of showing respect is by using a client's lived name and gender pronouns to the greatest extent possible (checking with the client beforehand that this is appropriate). Before you use a client's lived name and pronouns in court pleadings, include a brief note that you plan to do so. When a transgender client's name and gender have been legally changed, and there is no issue in the case relating to the client's gender, there is no need to explain the former name or transgender status on pleadings or other documents.

5. RESPECT CLIENT CONFIDENTIALITY AROUND SEXUAL ORIENTATION AND GENDER IDENTITY.

Sometimes a client may not want information about sexual orientation and gender identity shared outside your organization. Put processes in place for maintaining the confidentiality of such information in the event a client wishes to keep the information private. For example, forms should have a space to mark clearly that a client does not wish to have the client's legal name shared with others outside the organization (as this might out them as transgender). In general, staff should check with the client before sharing information about the client's sexual orientation or gender identity outside the organization.

By making small changes in practices and policies, legal services organizations can make a big difference in allowing LGBT clients to access services and receive competent representation. Talking with clients about sexual orientation and gender identity helps create a respectful and welcoming environment. It also allows advocates to identify information necessary for competent representation; even if your state does not

have specific laws prohibiting discrimination based on sexual orientation or gender identity, your client may have federal claims, and even if your state does not recognize marriages between same-sex couples, the federal government recognizes these marriages for many purposes. Without creating a space for LGBT clients to talk about sexual orientation and gender identity, advocates may miss potential claims and legal protections, thereby preventing them from fulfilling their ethical responsibilities to provide competent representation. Legal services organizations are already serving LGBT clients, but without changing our practices and policies to allow us to provide respectful and competent services to them, we cannot fulfill our mission to ensure that all people have equal access to justice.

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Appendix 4

A Rural Legal Aid Perspective on Creating an LGBT Program

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A Rural Legal Aid Perspective on Creating an LGBT Program

*By Dan Torres, Esq., Program Manager, Proyecto Poderoso¹
California Rural Legal Assistance*

This article explores California Rural Legal Assistance's (CRLA) initiative to serve low-income lesbian, gay, bisexual and transgender (LGBT) clients. Specifically, the steps that CLRA has taken, so far, to reach an underserved community are set forth below along with advice on reaching the LGBT community in particular. CRLA's journey and its ongoing efforts to strengthen its LGBT advocacy offer ideas for other organizations to undertake this important work.



Background

Since 1966, CRLA has been fighting for justice alongside the most exploited communities in our society. From challenging racist policies in schools to helping indigenous families create safer and healthier communities, CRLA has had a history of combating discrimination.

In the mid-1990s, CRLA developed a practice of assisting farm worker clients who had been sexually harassed. Most of the CRLA cases at that time involved women who had been harassed by men. Before long, the community presented CRLA with a new pattern of discrimination cases with LGBT farm workers who had been harassed in the fields.

One example of an early case handled by CRLA involved a male farm worker who faced constant anti-gay epithets from his foreman and co-workers. The verbal harassment escalated to physical harm when our client's co-workers threw him into an irrigation canal in response to the foreman's promise of a case of beer

for doing so. CRLA was ultimately able to negotiate a settlement on his behalf. That case, however, opened CRLA's eyes both to the existence of the LGBT farm worker community and the need to develop more skills in handling future cases for LGBT people. Of course, before this example, LGBT-discrimination occurred in and around CRLA communities, but clients rarely disclosed sexual orientation and gender identity discrimination to CRLA advocates. The lack of disclosure made the LGBT rural community seem "invisible."

In the last decade, however, LGBT rural communities have stepped out of the shadows. This is particularly true for same-sex households whose number has grown by half in the last decade nationwide.² Over time, through intentional community outreach by CRLA advocates, low-income LGBT people have become more visible in our communities of service, and we are now learning more about the prevalence of discrimination and struggles for justice they face. For CRLA, this has meant learning about LGBT advocacy and adapting our core strategies to be more inclusive of the LGBT community. It is the client community and its increased visibility that motivated CRLA to be more intentional about this work and start an LGBT project called *Proyecto Poderoso*, or Project Powerful.

The intentional effort to start the project involved hiring staff that could lead this advocacy at CRLA and develop key partnerships, such as a partnership with the National Center for Lesbian Rights (NCLR). Leveraging NCLR's expertise in LGBT advocacy, CRLA enhanced its own advocacy on behalf of rural poor communities and farm workers via *Proyecto Poderoso*. In 2007, *Proyecto Poderoso* set out to expand legal services for low-income LGBT people living in rural

California. With specific allocation of staff resources, *Proyecto Poderoso* started as a local project within one CRLA office. *Proyecto Poderoso* has since developed into a statewide CRLA program.

Designing a Blueprint for an LGBT Program

Step 1: Study the Community

At the early stages of developing *Proyecto Poderoso*, CRLA obtained the help of the Williams Institute at UCLA Law School to conduct a demographic study of the LGB population³ within CRLA's service area. The study found that there were 136,000 lesbian, gay and bisexual people living in CRLA service counties. The study was eye-opening for many reasons. First, the past invisibility of the LGB community made the large numbers of LGB people found to be living in rural California seem shockingly high and highlighted a void in CRLA's service. Second, the data was also important in challenging common stereotypes that LGB people do not live in rural communities. Finally, the study refuted another common stereotype that most LGB people are relatively wealthy by documenting the large numbers of low-income LGB people in rural communities. The study found that the LGB people and heterosexual people living in CRLA service areas face similar poverty rates. It also found that LGB people in rural communities experience more poverty than LGB people living in urban centers. The study offered much more information about the LGB rural community, all of which was important for purposes of program planning and informing CRLA's strategies for serving the community.

Step 2: Develop Organizational Competency and Build the Community's Trust

Part of building an LGBT program involves creating relationships of trust with the LGBT community. Essential to building that trust is making sure that your house is in order before clients come through the door. Rural LGBT clients face discrimination in schools, jobs, homes and public spaces, and fear seeking help from any agency, including legal aid offices. Therefore, *Proyecto Poderoso* staff worked to develop deeper levels of cultural competency among CRLA staff to handle intakes, conduct outreach and to interview clients in ways that respect the LGBT community. The trainings included information on basic LGBT terminology. They also underscored the importance of not making

assumptions about a client's gender identity and sexual orientation. Trainers suggested interview questions that created a space for clients to specify how they want to be identified and openly disclose their legal problems.

Getting LGBT clients to trust your organization takes developing a good reputation with the LGBT client community. That effort takes time. Figuring out what your organization can do for the LGBT community is a process. Part of the journey involves examining your organization's priority areas and thinking about how the LGBT advocacy fits within that framework. To avoid confusion and maintain trust, it is important to keep a few strategies in place. First, be willing to expand existing practice areas to include the needs of LGBT clients. Second, develop partnerships with legal experts in LGBT law that can co-counsel with you as you develop experience working on new LGBT issues. Third, develop quality referrals to LGBT legal specialists, in the event you will not be able to assist the client. Keeping these strategies in mind will help address client needs competently and ensure you maintain your trusted advocate status as you continue to improve your LGBT program.

Step 3: Address LGBT Client Needs in Core Strategies and Practice Areas

CRLA found that the strategies for carrying out LGBT advocacy aligned with the overall advocacy programs that it already had in place, such as in the areas of employment, housing, education and other civil rights. Further, the LGBT client community is very much part of every community CRLA already serves and confronts many of the same issues that the broader rural, low-income community faces.

At the same time, in order to be effective, LGBT advocacy has to address the nuances of the discrimination faced by LGBT clients and incorporate the available protections that exist under state and federal law. In addition to the cultural competency trainings, *Proyecto Poderoso* offered trainings and updates on changes to the law to CRLA staff. Some of the tools to reach and serve the LGBT population are described below.

Direct Legal Services

Legal aid work is LGBT work. Many of the issues that LGBT clients bring to CRLA are bread and butter legal aid issues that are often addressed by direct legal representation. For example, the most common type of legal need LGBT clients bring to CRLA is employment discrimination. LGBT clients also need legal assistance

with discrimination in public accommodations, housing and education. Within those areas of need, LGBT clients have suffered some of the most severe forms of hate crimes and bullying. CRLA has had decades of experience working with diverse communities on issues of discrimination. Nevertheless, it was still important to be mindful of the different layers of challenges each community faces with discrimination. This is especially true for serving low-income rural LGBT clients because it can be difficult for these clients to talk about the discrimination they suffered. Therefore, existing strategies at times need to be adapted. An example of an adapted strategy is offered below.

Community Education

Community education has long been a core CRLA strategy. *Proyecto Poderoso* undertakes community education on LGBT legal rights, which continues to be critical as many people in rural communities are not aware of their legal rights. We often encounter many people in the general rural population, both straight and LGBT, who are not informed of existing LGBT legal protections. Consequently, the community education strategy serves two purposes: first, educating LGBT people about their legal rights so that they may vindicate those rights and, second, informing the general population, so that they know to respect those rights.

One example of CRLA's innovative community education is a *radionovela*, a Spanish-language radio soap opera that it produced to educate the public about LGBT issues. CRLA has used *radionovelas* in the past to raise awareness about legal issues in Latino migrant communities on various topics such as pesticide exposure and workers' rights. In partnership with *Radio Bilingue* and the Family Acceptance Project, *Proyecto Poderoso* developed a radio story about a gay Latino youth who was bullied in school because of his sexual orientation. Since he had not yet told his mother that he is gay, he was afraid to tell her about being bullied. Nevertheless, his mother found out that her son is gay and was being bullied in school. She struggled to accept her son, and protect him in school. Ultimately she finds help from family friends who also have a gay son. The family friends share their experience of family acceptance of their son and refer her to a legal aid office to get help with the bullying incidents. The story illustrated several common themes that community members wanted to be expressed about acceptance of LGBT people and the challenge of protecting the rights of LGBT people.

Educating Spanish-speaking communities about LGBT discrimination, including bullying at school, raises taboo subject matter. Therefore, *Proyecto Poderoso* searched for familiar ways to open up the conversation with its clients and develop awareness on this issue. As in the past, this community education strategy is proving to be effective at opening new doors for community dialogue on a difficult social and legal issue.

Leadership Skills

In addition to reaching out to the larger rural community, *Proyecto Poderoso* also works with LGBT clients to develop their own leadership skills to empower clients to address discrimination and assert their rights. *Proyecto Poderoso* also works with clients on developing their confidence to speak up, whether in media appearances, or in other settings where they can assist our advocates with community legal presentations. The leadership development work seeks to raise the confidence of LGBT clients, ameliorate the effects of their past discrimination, and prevent future discrimination. By raising visibility of the LGBT clients and simultaneously increasing their knowledge of legal rights, we seek to help clients lead the way to more secure lives for themselves and their community members.

Community Development and Rural LGBT Organizations

Though few rural LGBT-identified organizations exist, they serve an important role for low-income LGBT people. Many of these groups have informal organizational structures and very limited budgets, yet they offer low-income LGBT people critically important services such as peer support meetings, shelter, job training workshops and other important economic development services. Often, these groups cannot afford legal counsel of their own. As an emerging community resource, rural LGBT organizations need legal help on deciding whether or how to incorporate into non-profits. Because they can further develop resources for low-income LGBT communities, providing legal assistance to rural LGBT organizations is another important strategy for *Proyecto Poderoso* to serve the larger LGBT community.

Step 4: Expanding and Building More Capacity

The work ahead involves branching out to other organizations and agencies. In that effort, *Proyecto Poderoso* has worked to build capacity of other legal aid organizations, governmental agencies and social

service providers, to collaboratively increase access to justice for LGBT clients. Fortunately, *Proyecto Poderoso* has had excellent opportunities to expand its reach. Government and non-profit agencies have invited *Proyecto Poderoso* to participate in joint outreach efforts to LGBT communities. For example, a local county office on aging invited *Proyecto Poderoso* to conduct a series of community legal presentations to raise awareness about LGBT seniors' rights. In addition, a school district requested *Proyecto Poderoso's* participation in an anti-bullying roundtable. Similarly, legal aid organizations and social service providers continue to search for new ways to collaborate, all with the goal of increasing access to justice for LGBT people.

Reflections: Lessons Learned

Despite ongoing success, not all of the work has come easily. There have been many lessons learned along the way. Some of them have been discussed above, such as the importance of training organizational staff and partners on LGBT cultural competency and legal rights. That effort needs to continue and needs to be repeated often. It generally takes more than one round of training for critical messages to be grasped by staff and partners. We have found that different types of training styles can help to improve cultural competency levels. The LGBT cultural competency trainings have to exceed standard diversity training for staff. It is not enough to cover appropriate terminology because sometimes the information does not mean much without a context. Instead, trainings should include role-plays and case studies of real situations our clients face so that staff and advocates get a deeper perspective on the particularized issues LGBT clients experience.

Supervisors and managers must ask whether they have LGBT inclusive language in their own policies and programs. This also means taking a hard look at intake systems and protocols to ensure that LGBT clients will feel confident that they will be respected and well-served by the organization. An important value-added by having dedicated or assigned LGBT project staff is that they can pose these questions, call for necessary reforms and assist with implementation of necessary changes.

Adequately serving LGBT clients takes organizational commitment and support. This means being as intentional in developing LGBT advocacy as an

organization would with any other targeted advocacy. For example, in developing needs assessments, working with client advisory groups, and drafting work plans, organizations should use these planning tools to map out how they will carry out their LGBT advocacy. In the end, the clients will be better served.

Conclusion

Advocating on behalf of marginalized, low-income people is what legal aid organizations do. LGBT clients are marginalized and experience poverty rates similar to the general rural population. Advocating on behalf of low-income LGBT people fits within the broader justice outcomes we all work towards. As described above, legal aid organizations can fill an existing void in service to the LGBT population by recognizing the need within existing service populations, developing organizational competency and community trust, fine-tuning existing practice areas to meet the needs of the LGBT community, and building capacity within the LGBT community itself. The work we do for LGBT clients not only advances justice for the clients, but it makes our organizations relevant to the changing needs of the people we serve.

- 1 Dan Torres is an attorney and program manager for *Proyecto Poderoso*—Project Powerful— a California Rural Legal Assistance partnership with the National Center for Lesbian Rights aimed at improving legal services for low-income LGBT residents of rural California. Previously, Dan worked at the Immigrant Legal Resource Center organizing LGBT immigrants, conducting Know Your Rights presentations and providing technical assistance to legal services and pro bono attorneys. He represented clients as a staff attorney at the California Rural Legal Assistance Foundation in Sacramento, worked as a clinical instructor at the UC Davis School of Law Immigration Law Clinic, and served as a staff attorney for the United States Court of Appeals for the Ninth Circuit. Dan maybe reached at dtorres@crla.org.
- 2 <http://williamsinstitute.law.ucla.edu/press/finding-gay-rural-america>.
- 3 Due to lack of data sources, transgender people were not counted in this study. Therefore, the acronym LGB refers only to lesbian, gay and bisexual people. One CRLA county was also not included.

Appendix 5

Gathering Information:

Low Income LGBTQ Legal Needs Assessment Provider Survey ; Low Income LGBTQ Legal Needs Assessment Provider Demographics; Legal Services NYC's Survey of Legal Needs of the NYC LGBT Community

Low-Income LGBTQ Legal Needs Assessment – Provider Survey

This survey is part of Legal Services NYC's resolution to address the needs of NYC's low-income LGBT community. This document provides a framework for a conversation with LGBT providers about legal needs, gaps in services, and areas in need of systemic change. We are building both our practice and our relationships in the community by ensuring that our resources are focused on the right issues.



Name of Organization: _____

Collaborations & Referrals

1. Please give a general overview of the mission and structure of your organization.

2. What are some ways clients learn about and/or come to your organization?

3. What other LGBTQ or HIV organizations do you work with on a regular basis?

We do not work with LGBTQ or HIV organizations because:

4. Which legal providers serving the LGBTQ community do you work with (if any)?

Describe the relationship between the legal provider(s) and your organization.

What legal services do your clients receive from this/these provider(s)?

5. Do you ever make other referrals for low-income clients with legal problems? ☐ Yes ☐ No
To what organizations?

For what types of cases?

What are the results for your clients?

Low-Income LGBTQ Legal Needs Assessment – Provider Survey

6. What is the reputation of Legal Services NYC among your staff or clients?

7. Do you think your clients are willing to seek legal services? ☐ Yes ☐ No
If not, what are the barriers that prevent them from seeking legal services?

Legal Needs of Clients

8. What are the three most common problems facing your low-income clients?

(1)

(2)

(3)

9. What services do you provide to address these problems?

10. What are the most important barriers that prevent your organization from meeting those needs?

11. What are the ways lawyers could be helpful in addressing any of these problems?

12. What other types of problems do your clients have that you wish you could refer to a lawyer?

Low-Income LGBTQ Legal Needs Assessment – Provider Survey

Survey administration note: In the next section, ask the provider about each general area. We are trying to capture problems that providers might not conceptualize as possibly having legal solutions. Examples are provided to give a general idea of potential problems.

13. What are the main problems your clients experience with emergency housing?

(For example: shelters; scatter-site or supportive housing; SROs; foster care; harassment; placement problems)

Describe:

14. What are the main problems your clients experience with permanent housing?

(For example: Section 8; NYCHA/public housing; private rental apartments; rent arrears; lease problems; harassment/mistreatment)

Describe:

15. What are the main problems your clients experience with public benefits?

(For example: Public Assistance (PA); HASA; SSI/SSD: unemployment; SNAP/food stamps; Medicaid; public benefit applications; PA sanctions; case closings; incorrect budget; harassment/mistreatment by workers or security guards)

Describe:

16. What are the main problems your clients experience with employment?

(For example: being unfairly denied jobs; being unfairly terminated; harassment or personal safety problems on the job; minimum wage & overtime; not being paid for all the time they work)

Describe:

17. What are the main problems your clients experience with education or at school?

(For example: verbal harassment or physical bullying by other students, school staff, or school safety officers; unfair punishments (suspension, expulsion, etc.); school doesn't protect LGBTQ students; special education needs)

Describe:

Low-Income LGBTQ Legal Needs Assessment – Provider Survey

- | | |
|-----|--|
| 18. | What are the main barriers that your clients experience accessing or receiving health care?
<i>(For example: wills; health care proxy/living will; accessing health care; medical providers refusing to treat patient who is HIV+; substandard care received because patient is LGBTQ or HIV+; violation of confidentiality; insurance; Medicaid; ADAP)</i>
Describe: |
| 19. | What are the main problems your clients experience with the police?
<i>(For example: verbal harassment; physical harassment or assault; sexual assault; stop & frisk; being profiled or targeted because of being LGBTQ; being treated poorly when making a complaint)</i>
Describe: |
| 20. | What are the main problems your clients experience in public spaces?
<i>(For example: verbal harassment; physical harassment or assault; sexual assault; being denied services or harassed at a store, restaurant, or government agency; problems accessing a bathroom that matches gender identity)</i>
Describe: |
| 21. | What are the main family-related problems facing your clients?
<i>(For example: custody or visitation; child support; guardianship; adoption; abuse or neglect case; PINS case; marriage; divorce; domestic violence; foster care; involvement with ACS)</i>
Describe: |
| 22. | Do you have transgender clients with any trans-specific legal needs?
<i>(For example: getting a legal name change; getting legal name updated with school, work, landlord, HASA, etc; changing gender marker (M/F) at a government agency; accessing affordable health care for trans-specific treatment; being treated differently by police, agency, school, landlord, etc., because of being trans)</i>
Describe: |

Low-Income LGBTQ Legal Needs Assessment – Provider Survey

23. What are the main problems your clients experience related to immigration?
(For example: citizenship applications; undocumented victims of domestic violence, criminal activity, crimes in workplace, or trafficking; petitions for immediate relatives, same-sex spouse, or fiancé; mistreatment by an immigration office or official)

Describe:

24. Do you have any clients who are military veterans who were discharged for being LGBTQ?

☐ Yes

☐ No

How many? _____

25. What kinds of “know your rights” trainings do you think your clients might benefit from?

26. What kind of information on legal issues would be helpful to your staff?

27. Do you have any suggestions for making legal services more accessible to low-income LGBTQ communities? What would help low-income clients to access legal help?

Next Steps

28. Who else in your community (other community groups or community leaders) should we talk to?

29. Would any of your client groups be willing to talk to us about their legal needs? ☐ Yes ☐ No

30. Who at your organization could help arrange for us to meet with them?

Please tell us about yourself.

Organization: _____

Program/Project Name: _____

Address: _____

_____ NY ZIP Code: _____

Your Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Thank you!

Please email completed survey to rights@sbils.org or fax to (718) 233-6349

Low-Income LGBTQ Legal Needs Assessment – Provider Demographics

Thank you for filling out this survey. It will help us understand the demographics of the low-income LGBTQ community in New York City and better direct our services to meet the needs of low-income LGBTQ New Yorkers.



Please tell us about yourself.

Organization: _____

Program/Project Name: _____

Address: _____

_____ NY ZIP Code: _____

Your Name: _____

Title: _____

Email Address: _____

Phone Number: _____

LGBTQ Services

1. To what extent does your organization work exclusively with individuals who are LGBTQ?

☐ Exclusively ☐ Primarily ☐ Less than 50% ☐ Very little

2. Approximately how many LGBTQ individuals do you serve annually?

3. What are the top five services your organization provides to LGBTQ clients?

_____ Advocacy on their behalf	_____ Housing
_____ Case Management	_____ Financial Assistance
_____ Counseling	_____ Legal
_____ Education	_____ Networking
_____ Health Care	_____ Recreation
_____ Information/Referral	_____ Public Policy
_____ Other: _____	

HIV-Related Services

4. To what extent does your organization work exclusively with individuals who are HIV+?

☐ Exclusively ☐ Primarily ☐ Less than 50% ☐ Very little

5. Approximately how many HIV+ individuals do you serve annually?

6. What are the top five services your organization provides to HIV+ clients?

_____ Advocacy on their behalf	_____ Housing
_____ Case Management	_____ Financial Assistance
_____ Counseling	_____ Legal
_____ Education	_____ Networking
_____ Health Care	_____ Recreation
_____ Information/Referral	_____ Public Policy
_____ Other: _____	

Low-Income LGBTQ Legal Needs Assessment – Provider Demographics

We would greatly appreciate if you could help us understand the demographics of your client population:

Your LGBTQ clients:	Your HIV+ clients:
What percent of your LGBTQ clients are: _____ Lesbian _____ Gay _____ Bisexual _____ Transgender (male to female) _____ Transgender (female to male) _____ Don't know	What percent of your HIV+ clients are: _____ Lesbian _____ Gay _____ Bisexual _____ Transgender (male to female) _____ Transgender (female to male) _____ Don't know
What percent of your LGBTQ clients are: _____ Black/African American _____ Hispanic or Latino/a _____ Asian/Pacific Islander _____ South Asian _____ Native American/American Indian _____ White (not Hispanic) _____ Multi-Racial _____ Other _____ Don't know	What percent of your HIV+ clients are: _____ Black/African American _____ Hispanic or Latino/a _____ Asian/Pacific Islander _____ South Asian _____ Native American/American Indian _____ White (not Hispanic) _____ Multi-Racial _____ Other _____ Don't know
What percent of your LGBTQ clients live in: _____ The Bronx _____ Brooklyn _____ Manhattan _____ Queens _____ Staten Island _____ Elsewhere/Don't know	What percent of your HIV+ clients live in: _____ The Bronx _____ Brooklyn _____ Manhattan _____ Queens _____ Staten Island _____ Elsewhere/Don't know
What percent of your LGBTQ clients are: _____ Under age 18 _____ Age 18 - 55 _____ Over age 55 _____ Don't know	What percent of your HIV+ clients are: _____ Under age 18 _____ Age 18 - 55 _____ Over age 55 _____ Don't know
What percent of your LGBTQ clients receive: _____ Public Assistance _____ SSI/SSD _____ Veteran's Benefits _____ Unemployment _____ Employment income _____ Other source of income (specify): _____	What percent of your HIV+ clients receive: _____ Public Assistance _____ SSI/SSD _____ Veteran's Benefits _____ Unemployment _____ Employment income _____ Other source of income (specify): _____
What percent of your LGBTQ clients are low-income? _____ <i>(Roughly < \$35,000/year for 1 person; < \$46,000 for 2 people; < \$60,000 for 3 people; < \$94,000 for 4 people)</i>	What percent of your HIV+ clients are low-income? _____ <i>(Roughly < \$35,000/year for 1 person; < \$46,000 for 2 people; < \$60,000 for 3 people; < \$94,000 for 4 people)</i>
What percent of your LGBTQ clients are HIV+? _____	

Legal Services NYC's Survey of Legal Needs of the NYC LGBT Community

Legal Services NYC is surveying the LGBT community in New York City about your legal needs.

This survey will provide the first comprehensive understanding of the legal issues facing LGBT people in New York City, and will help Legal Services NYC, the largest provider of free civil legal services in the country, provide respectful legal services for low-income people that are fully responsive to the needs of the LGBT community.

We want to serve the LGBT community as best we can. As you go through this survey, you might realize that you would like to talk to a lawyer about some of the things that have happened to you. We will provide phone numbers for each of our offices at the end of the survey. Although we cannot promise to represent you, we invite you to call to discuss your legal issue.

Again, our thanks for taking the time to complete this survey. This helps Legal Services NYC be more responsive and useful to you and the New York City LGBT community.

* Required



Please only take this survey once.

About You

1. What is your sexual orientation? *

Check all that apply.

- ☐ Lesbian
- ☐ Gay
- ☐ Bisexual
- ☐ Queer
- ☐ Straight
- ☐ Other:

2. How do you identify your gender? (mark all that apply) *

Check all that apply.

- ☐ Male
- ☐ Female
- ☐ Transgender (trans*, MTF, FTM, genderqueer)
- ☐ Intersex
- ☐ Other:

3. How do you identify your race/ethnicity? (mark all that apply)

Check all that apply.

- ☐ Black/African American/African descent
- ☐ Hispanic or Latino/a
- ☐ Native American/American Indian
- ☐ South Asian
- ☐ Asian/Pacific Islander
- ☐ Multi-Racial
- ☐ White (not Hispanic)
- ☐ Other:



4. How old are you? *

Mark only one oval.

- ☐ Under 18
☐ 18 - 24
☐ 25 - 55
☐ 56 or older

5. What is your primary language?

Mark only one oval.

- ☐ English
☐ Spanish
☐ Chinese
☐ Russian
☐ French Creole
☐ French
☐ Italian
☐ Yiddish
☐ Other: _____

6. What is your HIV status?

Mark only one oval.

- ☐ HIV positive
☐ HIV negative
☐ Don't know

7. What is your zip code? *

8. What is your source of income? (mark all that apply)

Check all that apply.

- ☐ Public Assistance/HRA/HASA - cash or shelter payments
☐ Food Stamps/SNAP
☐ SSI/SSD
☐ Veteran's Benefits
☐ Unemployment Benefits
☐ Employment - on the books
☐ Employment - off the books
☐ Pension or retirement investment income
☐ Social Security Retirement
☐ Other: _____

9. What is your monthly income? *

Mark only one oval.

- ☐ Under \$1,000
☐ \$1,000 - \$2,999
☐ Over \$3,000

10. What is your household's monthly income? *

Mark only one oval.

- ☐ Under \$1,000
☐ \$1,000 - \$2,999
☐ \$3,000 - \$4,999
☐ \$5,000 - \$6,999
☐ \$7,000 - \$8,999
☐ Over \$9,000

11. How many people are in your household, including yourself? *

Mark only one oval.

- ☐ 1
☐ 2
☐ 3
☐ 4
☐ 5
☐ 6
☐ 7 or more

12. What is your relationship status?

Mark only one oval.

- ☐ Single
☐ Partnered
☐ Domestic Partnership
☐ Legally Married
☐ Divorced or Separated
☐ Widowed

13. Have you had difficulty paying for a basic need in the last year? *

Such as housing, food, clothing, medical care, etc.

Mark only one oval.

- ☐ Yes
☐ No

14. How did you learn about this survey?

Mark only one oval.

- ☐ Callen-Lorde
☐ The LGBT Center
☐ Ali Forney Center
☐ Housing Works
☐ Queens Pride House
☐ BOOM! Health
☐ SAGE
☐ Sylvia Rivera Law Project
☐ VOCAL
☐ Staten Island Pride Center
☐ Rainbow Heights Club
☐ Bronx LGBTQ Center
☐ Brooklyn Community Pride Center
☐ Por amigos o el internet



Public Assistance / HRA / Welfare

15. Have you had problems with public assistance (welfare) in the last year? *

Mark only one oval.

- ☐ Yes
☐ No Skip to question 19.
☐ Don't Know

Public Assistance Problems

16. Have you had any of these problems in the last year? (Mark all that apply.)

Check all that apply.

- ☐ I had problems applying for benefits at HRA/welfare
☐ I was sanctioned or my HRA/welfare benefits were terminated
☐ I'm not getting the right amount of public assistance benefits from HRA
☐ I'm not getting the right amount of Food Stamps/SNAP
☐ HRA refused to add my same-sex partner to my case
☐ HRA staff refused to call me by my preferred name and/or pronouns
☐ HRA refused to change my name on my benefits card
☐ HRA refused to change my gender marker (M/F) on my benefits card
☐ I have been treated badly by HRA staff/security in other ways because I am LGBT (describe below)
☐ Other:

17. Which HRA office do you use?

18. Anything else you'd like to tell us about public assistance problems?



Social Security / SSI Benefits

19. Have you had problems with the Social Security Administration in the last year? *

Mark only one oval.

- ☐ Yes Skip to question 20.
☐ No Skip to question 23.
☐ Don't Know Skip to question 20.

Social Security Problems

20. Have you had any of these problems in the last year? (Mark all that apply.)

Check all that apply.

- ☐ I applied for SSI or other Social Security disability benefits but was denied
☐ I'm not getting the right amount of SSI or Social Security benefits
☐ My SSI or Social Security benefits were less because of an overpayment
☐ I was treated disrespectfully by SSA staff/security because I am LGBT
☐ SSA refused to change my name
☐ SSA refused to change my gender marker (M/F)
☐ I need information about how marriage could change my SSI
☐ I'm having trouble getting benefits related to a same-sex partner
☐ Other: _____

21. What Social Security office do you use?

22. Anything else you'd like to tell us about Social Security problems?

Housing

23. What type of housing do you live in? (Mark all that apply) *

Check all that apply.

- ☐ Private rental apartment
☐ Section 8 or NYCHA public housing
☐ Supportive housing (scatter-site or congregate care)
☐ I own my apartment/house
☐ Shelter
☐ SRO
☐ Foster care placement
☐ Other: _____

24. Have you had any of the following problems with housing in the past year? Mark all that apply.

Check all that apply.

- ☐ My landlord tried to evict me because I owe rent
☐ My landlord tried to evict me for a reason other than rent
☐ My landlord forced me out of my apartment without taking me to court
☐ I can't get repairs made
☐ My landlord treats me badly or unfairly because I'm LGBT
☐ My landlord refuses to add my same-sex partner/spouse to my lease or household composition
☐ I applied for an apartment but the landlord refused to accept public assistance (welfare), HASA, or Section 8
☐ A landlord refused to rent to me because I am LGBT
☐ I've been discriminated against in housing because I'm HIV+
☐ A shelter refused to house me with my same-sex partner/spouse
☐ I was harassed or treated unfairly at a shelter because I'm LGBT
☐ My home is facing foreclosure
☐ I've had no housing problems
☐ Other: _____

25. Anything else you'd like to tell us about housing problems?

Health Care

26. Have you had any of the following problems with your medical provider in the last year? (Mark all that apply.)

Check all that apply.

- ☐ A medical provider treated me badly or asked inappropriate questions because I am LGBT
- ☐ I believe that I receive worse health care from my medical provider because I am LGBT
- ☐ A medical provider refused to treat me because I am HIV+
- ☐ A medical provider refused to treat me because I am transgender
- ☐ A medical provider told someone my HIV status without my consent
- ☐ A medical provider gave someone medical information about me (not HIV-related) without my consent
- ☐ My medical provider outed me as transgender
- ☐ I have not had problems with my medical provider
- ☐ I've had problems getting gender-specific or transgender health treatment
- ☐ Other:

27. Have you had any of the following problems related to health insurance in the past year? (Mark all that apply.)

Check all that apply.

- ☐ I have had problems getting insurance through the Affordable Care Act/Obamacare/ACA
- ☐ I've had problems with my private insurance
- ☐ I've had problems with my Medicaid
- ☐ I've had problems with my Medicare
- ☐ I've had problems with my ADAP
- ☐ I have not had health insurance problems
- ☐ Other:

28. Anything else you'd like to tell us about health care problems?



Work

29. Have you had any of these problems in the past year? (Mark all that apply)

Check all that apply.

- ☐ I was not hired because I am LGBT
- ☐ I was treated badly or differently at work because I am LGBT
- ☐ I was fired unfairly because I am LGBT
- ☐ I've had one of the above problems because I am HIV+
- ☐ I've had one of the above problems because of my race, ethnicity, national origin, language religion, disability, or age
- ☐ I was paid less than minimum wage
- ☐ I was not paid for all of the time that I worked
- ☐ I was not paid the wage that was promised to me
- ☐ I have not had work problems in the last year
- ☐ Other:

30. Anything else you'd like to tell us about work problems?

Transgender

31. Do you consider yourself to be transgender or gender-nonconforming in any way?

This describes people whose gender identity or expression is different, at least part of the time, from the sex assigned to them at birth.

Mark only one oval.

- ☐ Yes
- ☐ No Skip to question 36.
- ☐ Don't know

Transgender Concerns

32. How do you identify? (mark all that apply)

Check all that apply.

- ☐ MTF / Transgender woman
- ☐ FTM / Transgender man
- ☐ Genderqueer / Gender non-conforming
- ☐ Other: _____

33. Have any of the following been true for you in the last year? (Mark all that apply)

Check all that apply.

- ☐ I need to change my name legally
- ☐ I've been denied access to and/or treated badly for using a bathroom or locker room that matches my gender identity
- ☐ I can't get health care that I need because I'm transgender
- ☐ I'm having problems with housing because I'm transgender
- ☐ I'm having problems with employment because I'm transgender
- ☐ I have been treated differently because I'm transgender (please tell us how, below)
- ☐ Other: _____

34. Do you need to change your name or gender marker (M/F) on your official documents?

Mark only one oval per row.

	I need to change my legal name on my records	I need to change my gender marker (M/F) on my records	I need to change both	Neither
With HRA	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
With SSA	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
With the DMV	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
On my birth certificate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

35. Anything else you'd like to tell us about transgender discrimination?



Public Places

36. In the last year, because of being LGBT, have you been denied services or treated badly in any of these situations?

Mark only one oval per row.

	Denied services or access	Treated badly	Both	Neither
By store or restaurant staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
By court staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
By subway, taxi, or bus staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
By an ambulance/EMS/medic	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In a bathroom or locker room	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

37. In the last year, have you experienced any of the following problems when you are in public places related to being LGBT?

Check all that apply.

- ☐ I've been verbally harassed
- ☐ I've been physically harassed or assaulted
- ☐ I've been sexually assaulted
- ☐ I have not had problems in public places because of being LGBT
- ☐ Other: _____

38. Anything else you'd like to tell us about problems in public places?



Police

39. In the last year, have you had any problems with the police related to being LGBT? *

Mark only one oval.

- ☐ Yes
- ☐ No *Skip to question 43.*
- ☐ I've had problems with the police, but not because I'm LGBT

Police Issues

40. Mark any of the problems that you've had with the police in the last year because you are LGBT.

You can select more than one option.

Check all that apply.

- ☐ I've been verbally harassed by the police
- ☐ I've been physically harassed or assaulted by the police
- ☐ I've been sexually assaulted by the police
- ☐ I've been targeted by the police because I'm LGBT
- ☐ I was treated badly because I didn't have ID
- ☐ I was treated badly because my ID didn't match my appearance
- ☐ I've been inappropriately stopped and frisked
- ☐ I've been wrongly arrested
- ☐ I've been treated poorly when making a complaint
- ☐ The police spoke to me in English, but I don't understand English
- ☐ Other: _____

41. Which police was it?

- ☐ NYPD
- ☐ Other: _____

42. Anything else you'd like to tell us about problems with the police?

Violence

43. Are any of the following true for you? (Mark all that apply)

Check all that apply.

- ☐ I have experienced domestic violence
- ☐ I have experienced sexual assault
- ☐ I am a victim of criminal activity
- ☐ I have experienced crime in my workplace
- ☐ I am a victim of trafficking
- ☐ I have experienced abuse or neglect by my parent/guardian/foster parent.

Immigration

44. Do you have legal needs related to immigration? *

Mark only one oval.

- ☐ Yes *Skip to question 45.*
- ☐ No *Skip to question 47.*
- ☐ Don't know *Skip to question 45.*

Immigration Issues

45. Do you have any of the following legal needs? (Mark all that apply.)

Check all that apply.

- ☐ I received a notice to appear in Immigration Court (for a removal/deportation proceeding) and need to speak with a lawyer
- ☐ I want to sponsor my same-sex spouse/fiance or relative for a green card (LPR) (or be sponsored myself)
- ☐ I have a green card & would like help to become a U.S. citizen
- ☐ I have asylum and want a green card
- ☐ I am seeking asylum
- ☐ I am undocumented
- ☐ I have been denied service or mistreated by an immigration office or official because I am LGBT
- ☐ Other: _____

46. Anything else you'd like to tell us about immigration problems?



Family

47. Do you have legal needs related to your family? *

Mark only one oval.

- ☐ Yes
- ☐ No Skip to question 50.
- ☐ Don't know

Family Problems

48. Do you need legal help with any of the following? (Mark all that apply)

Check all that apply.

- ☐ I want custody of or visitation with my child, or my partner's child
- ☐ I want to adopt a child or become a guardian of a child
- ☐ I need to get or change a child support order
- ☐ I need help dealing with ACS
- ☐ I want to learn more about my rights in the foster care system
- ☐ I want to learn more about the benefits I may be eligible for if my partner and I marry
- ☐ I want a divorce
- ☐ I am a survivor of domestic violence and want to talk to someone about my legal options
- ☐ I need a will or advance directive documents
- ☐ Other: _____

49. Anything else you'd like to tell us about family legal issues?

School

50. Are you currently a student? *

Mark only one oval.

- ☐ Yes Skip to question 52.
- ☐ No Skip to question 51.

Highest Level of Education

51. What is the highest level of education that you completed?

Mark only one oval.

- ☐ 8th grade or less
- ☐ Some high school
- ☐ High school diploma or GED
- ☐ Job training
- ☐ Some college
- ☐ Associate or technical degree/certificate
- ☐ College degree
- ☐ Graduate degree
- ☐ Other: _____

Skip to question 54.

Current Students

52. What type of school do you attend?

Mark only one oval.

- ☐ High school - public
- ☐ High school - private
- ☐ Job training
- ☐ Two year college or technical school
- ☐ Four year college
- ☐ Graduate school
- ☐ Other: _____

53. Have you had any problems in school related to being LGBT? *

Mark only one oval.

- ☐ Yes
- ☐ No Skip to question 56.
- ☐ Don't know



Problems at School

54. Have you experienced any of the following problems in the past year? (Mark all that apply)

Check all that apply.

- ☐ I was harassed or assaulted by other students
- ☐ I was harassed or assaulted by school staff
- ☐ I was harassed or assaulted by school safety officers
- ☐ I was cyberbullied (bullying using the internet, social media, texting)
- ☐ I reported mistreatment but school staff did not do anything to stop it
- ☐ I was unfairly punished by the school
- ☐ I have been denied access to and/or treated badly for using a bathroom or locker room that matches my gender identity
- ☐ I need special education services that I have not received
- ☐ I was denied access to a class or job program because I am HIV+
- ☐ Other: _____

55. Anything else you'd like to tell us about problems at school?

Veterans/Military

56. Are you currently: *

Mark only one oval.

- ☐ On active duty
 - ☐ In the reserves
 - ☐ Veteran
 - ☐ Never involved with the military
- Stop filling out this form.*

Veterans/Military Issues

57. Have any of the following happened to you? (Mark all that apply)

Check all that apply.

- ☐ I was discharged from the military for being LGBT
- ☐ I have had problems at the Veteran's Administration because I am LGBT
- ☐ I am not receiving all of the VA benefits that I believe I should be getting
- ☐ I don't want to seek treatment at the VA because I am worried about how I will be treated
- ☐ I've had trouble seeking an adjustment or upgrade of my discharge status or narrative
- ☐ My same-sex spouse has been denied spousal rights or benefits from the VA or Department of Defense
- ☐ Other: _____

58. Anything else you'd like to tell us about veteran or military legal issues?

LGBT Community Member Needs Assessment

Thank you very much for taking this survey!

Your answers will help Legal Services NYC provide the best possible legal services to the LGBT community of New York City.

If you would like to seek help for a legal issue, please contact us:

Bronx: (718) 928-2894
Brooklyn: (718) 237-5509
Manhattan: (646) 442-3144
Queens: (347) 592-2177
Staten Island: (718) 233-6492

Appendix 6

Class Action Complaint

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
ANGIE CRUZ and I.H.
on behalf of themselves and all others similarly
situated,

Plaintiffs,

CLASS ACTION COMPLAINT

-against-

HOWARD ZUCKER, as Commissioner of the
Department of Health,

Defendant.
-----X

PRELIMINARY STATEMENT

1. Gender Dysphoria (“GD”), formerly known as Gender Identity Disorder (“GID”),

is a serious medical condition recognized as such by physicians and other medical professionals worldwide. GD/GID is characterized by an extreme sense of distress due to a mismatch between birth sex and a person’s internal sense of their gender. The condition causes intense emotional pain and suffering and, if left untreated, can result in psychological dysfunction, debilitating depression and, for people without access to appropriate health care and treatment, suicidality and death. An established body of medical research demonstrates that hormone therapy and sex reassignment surgery are effective and medically necessary forms of therapeutic treatment for many people diagnosed with GD/GID.

2. For years, medical assistance coverage was available to Medicaid-eligible patients in New York for the treatment of GD/GID, including hormone treatment and sex reassignment surgery. In 1998, however, the New York State Department of Health (the “DOH”) reversed course, promulgating a regulation that precluded any payment whatsoever for “care, services,

drugs or supplies” rendered for the purposes of gender reassignment treatment or for “promoting” such treatment. Despite scientific evidence conclusively demonstrating otherwise, the DOH claimed then—and still does today, more than fifteen years later—that such treatment is “experimental” and not proven to be “safe and effective over the long term.” As a result, Medicaid-eligible patients who have been diagnosed with GD/GID are forced to make the difficult choice between foregoing the medical treatment they desperately need, or giving up the basic necessities of life (such as food and shelter) in order to pay for that treatment themselves.

3. The federal Department of Health and Human Services (the “HHS”) recently recognized that denying Medicare coverage for all gender reassignment surgery based on the alleged “experimental” nature of gender reassignment surgery is unreasonable in light of evidence establishing that such surgery is safe and effective. The DOH’s continuing coverage exclusion for gender reassignment surgery is not reasonable, based on the relevant medical and scientific evidence, and thus should be declared invalid.

4. Plaintiffs therefore bring this action on behalf of themselves and all others similarly situated against Dr. Howard Zucker, acting in his official capacity as Commissioner of the New York State Department of Health (“Defendant”), in promulgating and enforcing 18 N.Y.C.R.R. § 505.2(l) (hereinafter referred to as “Section 505.2(l)”) pursuant to 42 U.S.C. § 1983, the Supremacy Clause of the U.S. Constitution, art. VI, Article I, Section 11 of the New York State Constitution, and Section 1557 of the Patient Protection and Affordable Care Act (the “ACA”), 42 U.S.C. § 18116.

5. As set forth below, Plaintiffs seek declaratory and injunctive relief to enjoin Defendant from continued enforcement of Section 505.2(l), and other appropriate relief on the grounds that it: (i) conflicts with the Medicaid Act, 42 U.S.C. §§ 1396 et seq., and thus is preempted by the Supremacy Clause, U.S. Const. art. VI; (ii) unlawfully discriminates against a protected class of Medicaid-eligible persons and thus violates Article I, Section 11 of the New York State Constitution; and (iii) discriminates against Medicaid-eligible persons on the basis of sex and disability and thus violates Section 1557 of the ACA, 42 U.S.C. § 18116.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and the claims asserted herein pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1367.

~~7. Plaintiffs' claims for declaratory relief are brought pursuant to 28 U.S.C. §§ 2201 and 2202.~~

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Plaintiffs reside within this judicial district, the events giving rise to this action occurred in this judicial district, and Defendant is subject to personal jurisdiction in this judicial district.

THE PARTIES

9. Plaintiff I.H. resides in New York City and is a Medicaid recipient.
10. Plaintiff Angie Cruz resides in New York City and is a Medicaid recipient.
11. Defendant Howard Zucker is the interim Commissioner of the DOH. As such, he is responsible for the administration of the New York State Medicaid program and supervision

of the administration of the state's Medicaid program by the local social services districts. He maintains an office at Corning Tower, Empire State Plaza, Albany, New York.

CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) on behalf of themselves and a class of all others similarly situated, defined as:

All Medicaid-eligible persons who have been diagnosed with Gender Identity Disorder or Gender Dysphoria, and whose expenses associated with medically necessary GID- or GD-related treatment are not reimbursable by Medicaid pursuant to Section 505.2(l).

13. The class is so numerous that joinder of all members is impracticable.

Transgender people live in poverty at a rate approximately between twice and four times that of the general population, according to the National Transgender Discrimination Survey.

14. There are questions of law and fact common to the class, including, but not limited to whether Section 505.2(l) conflicts with the Medicaid Act, and whether the Defendant's actions in promulgating and enforcing Section 505.2(l) are preempted by the Supremacy Clause of the United States Constitution, and/or violate Article I, Section 11 of the New York State Constitution, and/or are otherwise not in accordance with law, and/or violate Section 1557 of the ACA, 42 U.S.C. § 18116, and whether declaratory and injunctive relief is therefore appropriate.

15. The named Plaintiffs' claims are typical of the claims of the class. The named Plaintiffs' and the class members' claims arise from the promulgation and enforcement of Section 505.2(l).

16. Declaratory and injunctive relief is appropriate with respect to the class as a whole because Defendant has acted on grounds applicable to the class.

17. The named Plaintiffs and the proposed class members are represented by the Sylvia Rivera Law Project, The Legal Aid Society, and Willkie Farr & Gallagher LLP, whose attorneys are experienced in class action litigation and will fairly and adequately represent the class.

18. A class action is superior to other available methods for a fair and efficient adjudication of this matter in that the litigation of separate actions by individual class members would unduly burden the Court and create the possibility of conflicting decisions.

FEDERAL STATUTORY AND REGULATORY SCHEME

19. Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq., creates the federal Medicaid program, through which the federal government provides matching funds to states to provide medical assistance to residents who meet certain eligibility requirements. 42 U.S.C. § 1396b. The objective of the Medicaid program is to enable each state to furnish medical assistance to individuals whose incomes and resources are insufficient to meet the costs of necessary medical services. 42 U.S.C. § 1396.

20. States are not required to participate in the Medicaid program, but if they choose to, they must comply with federal Medicaid statutes and their implementing regulations. 42 U.S.C. §§ 1396, 1396a, 1396c.

21. The federal Medicaid program requires a participating state to establish or designate a single state agency that is responsible for administering or supervising the administration of that state's Medicaid program. 42 U.S.C. § 1396a(a)(5).

22. Participating states also must submit a "state plan" to the Secretary of the United States Department of Health and Human Services ("HHS") for approval before that state may receive Medicaid funds. 42 U.S.C. §§ 1396a(a), (b).

23. A state plan "must include reasonable standards for determining eligibility for and the extent of medical assistance under the plan." 42 U.S.C. § 1396a(a)(17).

24. An individual is "categorically needy" and eligible for Medicaid if he or she falls into one of the seven eligibility categories set forth in 42 U.S.C. §§ 1396a(a)(10)(A)(i)(I) —

(VII). Persons who receive Supplemental Security Income ("SSI") are eligible and are considered "categorically needy" for Medicaid. 42 U.S.C. §§ 1396a(a)(10)(A)(i)(I); 42 C.F.R. § 435.120.

25. The Medicaid Act mandates that a state plan provide for making medical assistance available to all categorically needy individuals by providing, at minimum, inpatient hospital services, outpatient hospital services, laboratory and X-ray services, and physicians' services furnished by a physician. 42 U.S.C. §§ 1396a(a)(10)(A), 1396d(a)(1), 1396d(a)(2), 1396d(a)(3), 1396d(a)(5).

26. Pursuant to the Medicaid Act, medical assistance must be provided "in a manner consistent with . . . the best interests of the recipients." 42 U.S.C. § 1396a(a)(19).

27. The Medicaid Act further requires that “the medical assistance made available to any [categorically needy] individual shall not be less in amount, duration or scope than the medical assistance made available to other such individuals.” 42 U.S.C. § 1396a(a)(10)(B)(i).

28. Federal regulations likewise require that medical assistance is provided in equal amount, duration, and scope to all categorically needy Medicaid recipients. 42 C.F.R. § 440.240(b).

29. Federal regulations require that *all* services defined as required services in 42 C.F.R. §§ 440.10–440.50 and 42 C.F.R. § 440.70 be provided to *all* categorically needy Medicaid recipients. 42 C.F.R. § 440.210(a)(1).

30. Inpatient hospital services, defined as services that “are ordinarily furnished in a hospital for the care and treatment of inpatients and are furnished under the direction of a physician,” are required. 42 C.F.R. § 440.10(a)(1), (2).

31. Outpatient hospital services, defined as “preventative, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished to outpatients and are furnished by or under the direction of a physician,” are a required service. 42 C.F.R. § 440.20(a)(1), (2).

32. X-ray and other laboratory services “when ordered and provided by or under the direction of a physician or other licensed practitioner of the healing arts,” are a required service. 42 C.F.R. § 440.30(a).

33. Physicians’ services, defined as “services furnished by a physician within the scope of practice of medicine or osteopathy as defined by State law and by or under the

personal supervision of an individual licensed under State law to practice medicine or osteopathy,” are a required service. 42 C.F.R. § 440.50(a)(1), (2).

34. “[E]ach service must be sufficient in amount, duration or scope to reasonably achieve its purpose.” 42 C.F.R. § 440.230(b).

35. The “Medicaid agency may not arbitrarily deny or reduce the amount or scope of a required service under sections 440.210 and 440.220 to an otherwise eligible recipient solely because of the diagnosis, type of illness or condition.” 42 C.F.R. § 440.230(c).

36. Section 1557 of the ACA, 42 U.S.C. § 18116, provides, in relevant part that:

[A]n individual shall not, on the ground prohibited under . . . title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments).

ACA § 1557(a), 42 U.S.C. § 18116(a). The ground prohibited under Title IX, Education Amendments of 1972, is sex and states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]” 20 U.S.C. § 1681(a). Thus, the ACA prohibits health care programs receiving federal assistance from discriminating on the basis of sex. The Director of HHS’s Office for Civil Rights (the “OCR”), Leon Rodriguez, has confirmed that this protection includes gender, gender identity and failure to conform to the sex and gender stereotypes associated with one’s anatomical sex. A letter from Mr. Rodriguez to the National Center for Lesbian Rights dated July 12, 2012 states: “We agree that Section 1557’s sex discrimination prohibition extends to claims of discrimination

based on gender identity or failure to conform to stereotypical notions of masculinity or femininity[.]”

NEW YORK STATE STATUTORY AND REGULATORY SCHEME

37. New York State has opted to participate in the federal Medicaid program. N.Y. Soc. Serv. Law § 363-a.

38. The Medicaid program is administered in New York in accordance with Sections 363-369 of the New York Social Services Law, and the regulations promulgated thereunder. N.Y. Soc. Serv. Law §§ 363-369; 18 N.Y.C.R.R. §§ 358, 360, 505, et seq.

39. Effective October 1, 1996, the DOH assumed responsibility, formerly held by the New York State Department of Social Services (“NYSDSS”), for administering New York’s Medicaid Program. All regulations of NYSDSS with respect to the Medicaid program continued, in full force and effect, as regulations of the DOH. N.Y. Soc. Serv. Law § 363-a(1); 1996 N.Y. Session Law, c. 474, § 242.

40. New York Social Services Law § 365-a establishes the coverage and adequacy of medical assistance under the New York State plan for Medicaid. N.Y. Soc. Serv. Law § 365-a.

41. New York Social Services Law §§ 363 and 364(2)(e) mandate a “comprehensive program of medical assistance for needy persons . . . to operate in a manner which will assure a uniform high standard of medical assistance throughout the state,” in such a way “that the quality of medical care and services is in the best interests of the recipients.” N.Y. Soc. Serv. Law §§ 363, 364(2)(e).

42. Pursuant to § 365-a(2) of the New York Social Services Law, “medical assistance” is defined as “payment of part or all of the cost of care, services and supplies which are necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with his capacity for normal activity, or threaten some significant handicap. . . .” N.Y. Soc. Serv. Law § 365-a(2).

43. Medical assistance is also defined to include “surgical benefits for certain surgical procedures which meet standards for surgical intervention, as established by the state commissioner of health on the basis of medically indicated risk factors, and medically necessary surgery where delay in surgical intervention would substantially increase the medical risk associated with such surgical intervention,” N.Y. Soc. Serv. Law § 365-a(5)(b), and “surgical benefits for other deferrable surgical procedures specified by the state commissioner of health, based on the likelihood that deferral of such procedures for six months or more may jeopardize life or essential function, or cause severe pain; provided, however, such deferrable surgical procedures shall be included in the case of in-patient surgery only when a second written opinion is obtained from a physician, or as otherwise prescribed, in accordance with regulations established by the state commissioner of health, that such surgery should not be deferred,” N.Y. Soc. Serv. Law § 365-a(5)(c).

44. In New York State, medical assistance coverage includes: (a) “[c]onstruction of artificial vagina (vaginal atresia or absence) with or without graft”; (b) “[o]rchiectomy, simple unilateral[,] bilateral”; (c) “[a]mputation of penis, partial[,] complete[,] radical”; (d) “[c]omplete (simple) mastectomy”; (e) “[r]adical mastectomy, including breast, pectoral muscles and axillary lymph nodes”; and (f) “[t]otal hysterectomy (corpus and cervix) with or without tubes, and/or ovaries, one or both.” 18 N.Y.C.R.R. § 533.5.

45. 18 N.Y.C.R.R. § 505.2 sets forth eligibility for and the extent of physicians' services provided under the New York State Medicaid plan.

46. On July 16, 1997, the DOH published a Notice of Proposed Rule Making which proposed amending 18 N.Y.C.R.R. § 505.2 to include Section 505.2(l) (the "Notice of Proposed Rulemaking"). Section 505.2(1) provides:

Gender reassignment. Payment is not available for care, services, drugs, or supplies rendered for the purpose of gender reassignment (also known as transsexual surgery) or any care, services, drugs, or supplies intended to promote such treatment.

47. Despite acknowledging that promulgation of the proposed rule would only give rise to "minimal savings" because "the particular treatments and procedures involved in gender reassignment are also used to treat other medical conditions," the DOH adopted the regulation nevertheless, claiming that gender reassignment treatment "has not been shown to be a safe and effective treatment over the long-term."

48. In response to the Notice of Proposed Rule Making, the DOH did not receive any submissions in support of the proposed rule. However, the DOH did receive comments in opposition to the proposed rule from two physicians, Dr. Walter J. Meyer III and Dr. Heino F.L. Meyer-Bahlburg, each of whom were specialists with more than twenty years of experience in the treatment of persons with GD/GID. The DOH acknowledged receipt of the comments it had received from Dr. Meyer and Dr. Meyer-Bahlburg in the Notice of Adoption, which was published on March 25, 1998.

49. Dr. Meyer-Bahlburg noted that the contention that sex reassignment treatment "has not been shown to be a safe and effective treatment over the long-term" was "not in

agreement with the empirical data as documented in numerous follow-up studies of parties after sex reassignment in the U.S. and other countries.” For Medicaid-dependent patients with GD/GID, Dr. Meyer-Bahlburg said, enactment of the rule would cause “unnecessary suffering.” Dr. Meyer observed that the “appropriate, effective and safe treatment for [transgender] patients includes living in the role of the desired gender, hormonal treatment to match that gender, and surgical correction of the genitalia.” Dr. Meyer urged the DOH to reject the proposed rule, noting that it would be “inhuman” to deny these patients appropriate treatment, and that enactment would be based on prejudice against the persons who would receive this care.

CONSTITUTIONAL PROVISIONS

50. Article Six, Clause 2 of the United States Constitution provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.” U.S. Const. art. VI, Clause 2.

51. Article 1, Section 11 of the New York State Constitution provides that “[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof.” N.Y. Const. art. I, § 11.

FACTS

52. GD/GID is consistently recognized as “an identifiable, severe and incapacitating disease.” D. Harish & B. Sharma, Medical Advances in Transsexualism and the Legal Implications, 24 Am. J. Forensic Med. & Pathology, 100, 101 (2003).

53. GID is defined in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (“DSM-IV-TR”) as a condition characterized by “a strong and persistent cross-gender identification” with “persistent discomfort about one’s assigned sex” unrelated to either a “perceived cultural advantage[] of being the other sex” or “a concurrent physical intersex condition,” which results in “clinically significant distress or impairment in social, occupational or other important areas of functioning.” DSM-IV-TR, §§ 302.06, 302.85.

54. In May 2013, the American Psychiatric Association released the latest version of its Diagnostic and Statistical Manual of Mental Disorders (“DSM-V”). The diagnosis of GID was changed to GD, which is defined as follows:

- A. A marked incongruence between one’s experienced/expressed gender and assigned gender, of at least 6 months’ duration, as manifested by at least two of the following:
 - (i) A marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
 - (ii) A strong desire to be rid of one’s primary and/or secondary sex characteristics because of a marked incongruence with one’s experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
 - (iii) A strong desire for the primary and/or secondary sex characteristics of the other gender.
 - (iv) A strong desire to be of the other gender (or some alternative gender different from one’s assigned gender).
 - (v) A strong desire to be treated as the other gender (or some alternative gender different from one’s assigned gender).

- (vi) A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).
- B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

DSM-V, §§ 302.06, 302.85.

55. Sex reassignment has been endorsed by the country's leading medical organizations as safe and effective treatment for GD/GID.

56. For example, the American Medical Association has recognized that "an established body of medical research demonstrates the effectiveness and medical necessity of mental health care, hormone therapy and sex reassignment surgery as forms of therapeutic treatment for many people diagnosed with GD and GID" and opposes "categorical exclusions," such as Section 505.2(1), "of coverage for treatment of gender identity disorder when prescribed by a physician."

57. Similarly, the American Psychological Association "recognizes the efficacy, benefit and medical necessity of gender transition treatments," and has called upon "public and private insurers to cover these medically necessary treatments."

58. The American Psychiatric Association likewise "recognizes that appropriately evaluated transgender and gender-variant individuals can benefit greatly from medical and surgical gender transition treatments," advocates for "removal of barriers to care and supports both public and private health insurance coverage for gender transition treatment," and "opposes categorical exclusions of coverage for such medically necessary treatment when prescribed by a physician."

59. According to the World Professional Association for Transgender Health (“WPATH”), which is an international interdisciplinary professional association founded in 1979 and devoted to the understanding and treatment of individuals with gender identity disorders, “sex (gender) reassignment, properly indicated and performed . . . has proven to be beneficial and effective in the treatment of individuals with transsexualism, gender identity disorder and/or gender dysphoria.” In its Medical Necessity Statement, WPATH has noted that the “medical procedures attendant to sex reassignment are not ‘cosmetic’ or ‘elective’ or for the mere convenience of the patient. These reconstructive procedures are not optional in any meaningful sense, but are understood to be medically necessary for the treatment of the diagnosed condition.” Nor are they “experimental: decades of both clinical research and medical research show that they are essential to achieving well-being for the transsexual patient.”

60. The federal Medicare program allows for beneficiaries to apply for transition-related medical care. On May 30, 2014, the Appeals Board for HHS issued a decision declaring that Medicare’s blanket exclusion on gender-confirming surgeries, which was narrower than that of its New York State counterpart, was not valid. The Appeals Board ordered CMS to implement its decision within thirty days and “to apply any resulting policy changes to claims or service requests made by Medicare beneficiaries[.]” As a result, Medicare-eligible beneficiaries may seek coverage for transition-related care, while Medicaid beneficiaries who are otherwise similarly situated may not.

Plaintiff I.H.

61. I.H. is a categorically needy Medicaid recipient residing in Manhattan, New York. She is forty-six years old and has been a recipient of Medicaid benefits for most of the past twenty-five years.

62. I.H. supports herself with Supplemental Security Income ("SSI"), benefits from New York City's HIV/AIDS Services Administration ("HASA") and public benefits and food stamps from New York City's Human Resources Administration ("HRA").

63. I.H. was assigned male at birth, but has identified as a woman since she was about twelve years old. I.H. was first assessed by a psychiatrist due to her gender non-conformity on or around 1974, when she was approximately six years old. She was later diagnosed with GID.

64. I.H. has been living full-time as a woman for over twenty-five years, including conforming her physical appearance with her female gender. She began taking feminizing hormones in 1984 at the approximate age of fourteen. I.H. was not supervised by a doctor when she started taking hormones. She first received her hormones from her grandmother when she was young, and later purchased them from pharmacies or from other transgender women. During this time, I.H. did not receive hormones from doctors as she was unsure how to obtain them and did not have appropriate personal documentation, such as a birth certificate, for her to access health care.

65. I.H. developed serious health problems around the age of twenty-six as a result of her unsupervised hormone usage. For example, she had a minor heart attack when she was eighteen, followed by a major stroke when she was twenty-six. Her unsupervised hormone use also caused damage to her genitals. I.H. stopped taking hormones when she was

approximately twenty-six years old because of these health complications. I.H. ceased taking hormones at that time based on doctors' recommendations at that time, as they told her she had harmful levels of hormones in her system.

66. I.H. tried to live without hormones so as not to do any further damage to her health. Around age forty, I.H. started to feel that with age, she was getting stiffer and losing her femininity. She started taking hormones again, this time under a doctor's care. At first she had to pay \$100 for her hormones every month by herself, because Medicaid did not cover the hormone therapy.

67. Since 2010, I.H. has been taking feminizing hormones under the supervision of her physicians at Callen-Lorde Community Health Center. She takes an oral form of estradiol. Medicaid repeatedly denied insurance coverage for I.H.'s hormone therapy. Only after I.H. changed her gender marker with HASA from male to female four years ago did Medicaid start covering her hormone therapy.

68. Hormone therapy has made it possible for I.H. to appear as a woman. The feminizing hormones have helped her to develop her breasts and other feminine characteristics.

69. I.H. has suffered from severe pain in her genitals for more than fifteen years. She has been in constant treatment for her pain. Three years ago I.H. had her testicles removed through a bilateral orchiectomy, due to ascension (rising) of the testes into her abdominal cavity from prolonged feminizing hormone use. This surgery was covered by Medicaid because it was not related to I.H.'s GID treatment.

70. I.H. still suffers from pain in her genitals despite the surgical intervention and other treatments. Due to complications from her orchiectomy, I.H. has developed a thrombosis in her penis and suffers from priapism. Priapism is a condition where blood accumulation in the penis results in extended erections. These are severe illnesses that limit I.H.'s ability to leave the house and have forced I.H. to go to the hospital or emergency room on numerous occasions.

71. To resolve her priapism and thrombosis, I.H.'s doctor recommends full gender-confirming surgery, including a penectomy procedure, which involves removal of the penis. Upon information and belief, the complete removal of I.H.'s penis through penectomy would be covered by Medicaid because it is not related to I.H.'s treatment for GD/GID. However, if I.H.'s penis is completely removed through a penectomy, her penis tissue could not be used for a later vaginoplasty, the surgical construction of a vagina.

72. I.H. requires a vaginoplasty with full penectomy in order to complete her treatment for gender dysphoria. Upon information and belief, Medicaid will not cover a full vaginoplasty for I.H. because it would be prescribed as treatment for GD/GID.

73. In a vaginoplasty with penectomy, only parts of the penis are removed and parts of the penis are used for the construction of the vagina. Upon information and belief, if I.H. could directly obtain a vaginoplasty, she would be able to address the pain and inflammation in her genitals and complete sex reassignment at the same time.

74. Medicaid's refusal to cover I.H. vaginoplasty puts I.H. in a devastating situation. She has to endure the pain in her genitals until she can obtain a vaginoplasty. A penectomy

without vaginoplasty would make it challenging or impossible for her to obtain vaginoplasty at a later point, because vaginoplasty typically requires the use of existing tissue.

75. I.H. also needs breast reconstruction to affirm her female gender identity and repair damage from previous breast augmentation.

76. At the age of seventeen, I.H. had surgery, performed by a surgeon in private practice, to place silicone implants in her chest. She paid for the surgery herself. She was not on Medicaid at that time. The surgeon used cheap material, and the silicone implants ruptured three years later due to heat exposure. I.H. was twenty years old when the implants ruptured. Now, twenty-five years later, she still has many toxic silicone particles in her chest from the rupture. Loose silicone is linked to infections, disfigurement, respiratory distress, chronic pain, fatigue, cramping, stroke, pulmonary embolism, toxic shock, neuropathy, and heart failure, among other severe health conditions, and may cause death if untreated.

77. I.H. obtained two surgeries in which silicone particles were removed. The doctors have not been able to remove all silicone particles. I.H. herself paid for two previous surgeries in which silicone particles were removed from her body. She obtained the first surgery at age twenty-four. She was not on Medicaid at that time and paid \$10,000. At age thirty-two she had a second surgery which cost \$13,000. Medicaid did not cover the surgery. I.H. needs further surgeries to remove the silicone particles and to reconstruct her breasts.

78. Upon information and belief, Medicaid will not cover the costs for breast reconstruction surgery because it is related to GD/GID. I.H. is currently low-income and is not able to cover the costs for the breast surgery necessary to clean her chest of silicone particles and reconstruct her breasts,

79. The denial of coverage for vaginoplasty and breast reconstruction deprives I.H. of surgeries that are essential for her mental and physical health.

80. I.H.'s self confidence, mental stability and physical comfort suffer due to the mismatch of her genitals with her gender identity. She carries the mental diagnoses of severe bipolar disorder, post-traumatic stress disorder, anxiety with panic, and insomnia. I.H.'s doctor has concluded that these diagnoses are directly related to her GD. Because I.H. cannot obtain sex reassignment surgery and live as a woman with female genitals, her depression becomes so severe that she can be bed-bound for extended periods of time.

81. At the age of seventeen, I.H. was attacked badly by seven people when they found out she was transgender. This traumatic experience contributes to I.H.'s post-traumatic stress disorder. I.H. continues to be afraid that she will be attacked in public if she is perceived as transgender. Therefore it is crucial for her safety to outwardly appear as a non-transgender woman. This is only possible through hormone therapy and surgeries.

82. Without the surgeries, I.H. will remain in a status that is extremely dangerous for her physical and mental health. The thrombosis in her penis and priapism are serious illnesses that require urgent surgery. Two urologists have urged I.H. to obtain surgery as soon as possible.

83. The silicone particles that indurated after I.H.'s silicone implants burst cause constant pain in I.H.'s breasts, and she remains at risk of toxic shock and other side effects.

84. I.H. and individuals similarly situated need gender reassignment treatment, including surgery, in order to achieve the capacity to live a life without terrible suffering. I.H.

experiences acute interference with her capacity for normal activity as result of Defendant's refusal to provide medical assistance coverage of her gender reassignment treatment.

85. Vaginoplasty with full penectomy and breast reconstruction with removal of silicone are medically necessary for I.H.'s treatment of GD and other health conditions, which are directly related to her being denied care. I.H.'s significant depression often manifests in her disengaging in treatment for her HIV, a behavior referred to as passive suicidality.

86. Defendant provides medical assistance coverage for the same surgical procedures and other treatments indicated by I.H.'s physicians as medically necessary to treat her GD/GID to Medicaid recipients, who are similarly situated to I.H. and suffering from medical conditions other than GD/GID. See, e.g., 18 N.Y.C.R.R. § 533.5 (construction of an artificial vagina, orchiectomy, amputation of penis, mastectomy and hysterectomy).

87. Defendant's promulgation and enforcement of the blanket coverage exclusion set forth in Section 505.2(1) does not serve any compelling, important or legitimate State interest. To the contrary, as set forth above, there is no scientific support for the notion that gender reassignment treatment is experimental, unsafe or ineffective, which were the stated reasons for the enactment of Section 505.2(1) and for Defendant's refusal, upon statutorily-mandated review, to repeal, alter or modify Section 505.2(1) thereafter.

Plaintiff Cruz

88. Angie Cruz is a categorically needy Medicaid recipient residing in Bronx County, New York. Ms. Cruz is fifty years old and has been in almost continuous receipt of Medicaid benefits since she was a child.

89. Ms. Cruz supports herself with Supplemental Security Income ("SSI") and public benefits and food stamps from New York City's Human Resources Administration ("HRA").

90. Ms. Cruz was assigned male at birth, but has identified as a woman since she was ten years old. Most of Ms. Cruz's family has recognized that she was a woman since she was young. Her father was very accepting of her self-identification as female, although it took her mother considerably longer. Her two brothers and sister consider her a second sister and are very supportive. Since Ms. Cruz was young, most of her family members have addressed her as a woman and have used the pronoun "she" to describe her.

91. Ms. Cruz started taking hormones as a teenager in order to help align her physical appearance with her female gender identity. She started taking prescribed hormones in pill form on and off from the age of seventeen, after being evaluated by a psychiatrist to make sure she understood the risks and consequences of hormone therapy. Since then she has gotten her hormones either from doctors and pharmacies or from the street.

92. Ms. Cruz has lived openly as a woman since she was in her early twenties. She was first officially diagnosed with GID in 2004. Since 2005, Ms. Cruz's prescribed hormone therapy requires her to take estrogen injections every other week.

93. Angie Cruz's hormone therapy has created positive physical bodily change, resulting in a more feminine body. Her skin got softer, facial and body hair growth stopped and her facial features became more feminine. She has felt much more comfortable and confident because of the positive body changes.

94. Ms. Cruz stopped receiving hormone therapy in 2004 due to health problems. She developed severe pneumonia, resulting in the collapse of her lungs. She started taking a blood thinner, and was forced to go off hormones. She remained off hormones for eighteen months before going back on hormones in 2005. Since then, Ms. Cruz went off Medicaid and hormones for short periods of time on several other occasions.

95. In 2012, Ms. Cruz legally changed her name, and was able to obtain identification documents bearing the name Angie Milan Cruz. However, some of Ms. Cruz's documents, such as her New York State identification card and Medicaid card, still bear a "male" gender marker because she was unable to change the designation.

96. Although supported by much of her family, Ms. Cruz struggles as a result of having a physical body that does not match her gender identity. Although most people she meets address Ms. Cruz as a woman, she describes herself as having lived for a long time in secrecy.

97. Ms. Cruz needs breast augmentation surgery and vaginoplasty in order to complete her gender transition. She sees the next phase of her transition as a step-by-step process, and would like to begin with breast augmentation.

98. Ms. Cruz feels that without breast augmentation and vaginoplasty, her gender transition will not be complete. She feels that having breast augmentation and vaginoplasty will reduce the social isolation and stress she experiences as a result of her gender dysphoria.

99. Breast augmentation and vaginoplasty are medically necessary treatments for Ms. Cruz's gender dysphoria.

100. Upon information and belief, Medicaid will not pay for breast augmentation and sex reassignment surgery because it is related to Ms. Cruz's GID diagnosis and gender dysphoria.

101. Ms. Cruz feels great emotional pain because Medicaid will not cover her breast implants and vaginoplasty. It is devastating for Ms. Cruz to know she will not have any access to the desired surgeries. Ms. Cruz's self-confidence, mental stability and physical comfort suffer due to the mismatch of her body with her gender identity.

102. Ms. Cruz and individuals similarly situated need gender reassignment treatment, including surgery, in order to achieve the capacity to live a life without terrible suffering. Ms. Cruz experiences acute interference with her capacity for normal activity and a normal social life as result of Defendant's refusal to provide medical assistance coverage of her gender reassignment treatment.

103. Ms. Cruz describes it as impossible to find and maintain a relationship. Whenever she meets a potential male partner she has to come out as transgender. Ms. Cruz has experienced many relationship problems and loss of relationships because of the mismatch of her physical body and her female gender.

104. Defendant provides medical assistance coverage for the same surgical procedures and other treatments indicated by Ms. Cruz's physicians as medically necessary to treat her GD/GID to Medicaid recipients, who are similarly situated to Ms. Cruz, suffering from medical conditions other than GD/GID. See, e.g., 18 N.Y.C.R.R. § 533.5.

105. Defendant's promulgation and enforcement of the blanket coverage exclusion set forth in Section 505.2(l) does not serve any compelling, important or legitimate State interest.

To the contrary, as set forth above, there is no scientific support for the notion that gender reassignment treatment is experimental, unsafe or ineffective, which were the stated reasons for the enactment of Section 505.2(l) and for Defendant's refusal, upon statutorily mandated review, to repeal, alter or modify Section 505.2(l) thereafter.

FIRST CLAIM FOR RELIEF

106. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 105 above.

107. Section 505.2(l) and Defendant's written policies eliminating coverage for transition-related services for individuals diagnosed with GD/GID without an opportunity to obtain an individualized determination of medical necessity are in conflict with 42 U.S.C. § 1396a(a)(10)(A) and its implementing regulation 42 C.F.R. § 440.210, and are thus preempted by the Supremacy Clause of the U.S. Constitution, art. VI.

SECOND CLAIM FOR RELIEF

108. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 107 above.

109. Section 505.2(l) and Defendant's written policies eliminating coverage for transition-related services for individuals diagnosed with GD/GID conflict with Medicaid's comparability requirement, 42 U.S.C. § 1396a(a)(10)(B) and its implementing regulation 42 C.F.R. § 440.240(b), and are thus preempted by the Supremacy Clause of the U.S. Constitution, art. VI.

THIRD CLAIM FOR RELIEF

110. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 109 above.

111. Section 505.2(l) and Defendant's written policies eliminating coverage for transition-related services for individuals diagnosed with GD/GID for all categorically needy Medicaid recipients arbitrarily denies and reduces the amount, duration, or scope of a required service solely on account of diagnosis, which conflicts with 42 U.S.C. § 1396a(a)(17), 42 U.S.C. § 1396a(a)(10)(B)(i) and their implementing regulation 42 C.F.R. § 440.230(c), and are thus preempted by the Supremacy Clause of the U.S. Constitution, art. VI.

FOURTH CLAIM FOR RELIEF

112. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 111 above.

113. Defendant has violated and is violating Plaintiffs' rights under Section 11 of Article I of the Equal Protection Clause of the New York State Constitution by denying care, services, drugs and/or supplies to Plaintiffs to treat their GD/GID while providing the same care, services, drugs and/or supplies to categorically needy Medicaid recipients suffering from illnesses other than GD/GID without justification. N.Y. Const. art. I, § 11.

114. As a result of the promulgation and enforcement of Section 505.2(l), Medicaid provides coverage for non-experimental, medically necessary care, services, drugs and/or supplies to Medicaid-eligible people in New York except transgendered people. Section 505.2(l) therefore unlawfully discriminates on the basis of sex (including gender, gender identity and failure to conform to the sex and gender stereotypes associated with one's

anatomical sex), identity as a transgender person, sexual orientation, and/or disability, and its enforcement denies Plaintiffs the equal protection of the laws.

115. Defendant's actions in promulgating and enforcing Section 505.2(l) were undertaken purposefully and intentionally, and bear no substantial or rational relationship to any compelling, important or legitimate government interest.

FIFTH CLAIM FOR RELIEF

116. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 115 above.

117. Section 505.2(l) and Defendant's written policies eliminating coverage for transition-related services for individuals diagnosed with GD/GID exclude Plaintiffs from participation in, deny Plaintiffs the benefits of, and/or subject Plaintiffs to discrimination under the New York State Medicaid Program, a health program receiving federal financial assistance, on the basis of sex (including gender, gender identity, and failure to conform to the sex and gender stereotypes associated with anatomical sex) and disability. Section 505.2(l) therefore violates Section 1557 of the ACA, 42 U.S.C. § 18116, which is enforceable under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

118. WHEREFORE, Plaintiffs respectfully request that this Court:

- (a) Certify this action as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) with a plaintiff class defined as "All Medicaid-eligible persons who have been diagnosed with GID or GD and whose expenses associated with medically necessary GID- or GD-related treatment are not reimbursable by Medicaid pursuant to Section 505.2(l)";

- (b) Issue a permanent injunction pursuant to 42 U.S.C. § 1983 and otherwise, including but not limited to the Court's inherent power:
- i. ordering Defendant Zucker to provide Plaintiffs with medical assistance coverage for all care, services, drugs and supplies prescribed by Plaintiffs' physicians as medically necessary for the purpose of gender reassignment to treat Plaintiffs' GD/GID;
 - ii. enjoining Defendant Zucker from denying medical assistance coverage to Medicaid-eligible recipients who have been diagnosed with GD/GID for expenses associated with medically necessary treatment of their GD/GID (including physician-prescribed care, services, drugs and supplies).
 - iii. ordering Defendant Zucker to repeal 18 N.Y.C.R.R. § 505.2(l); and
 - iv. ordering Defendant Zucker to issue an Informational Letter ("INF") informing local social services districts that 18 N.Y.C.R.R. § 505.2(l) is no longer in effect.

~~(c) Enter a declaratory judgment declaring that:~~

- i. 18 N.Y.C.R.R. § 505.2(l) is preempted by the Supremacy Clause of the United States Constitution, art. VI. because it is inconsistent with the Medicaid Act;
 - ii. 18 N.Y.C.R.R. § 505.2(l) violates Article 1, Section 11 of the New York State Constitution by denying care, services, drugs and/or supplies necessary to treat Medicaid-eligible patients diagnosed with GD/GID;
 - iii. 18 N.Y.C.R.R. § 505.2(l) violates Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116, by denying care, services, drugs and/or supplies necessary to treat Medicaid-eligible patients diagnosed with GD/GID;
- (d) Award Plaintiffs costs and disbursements, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988; and
- (e) Award Plaintiffs such other and further relief as the Court may deem just and proper.

Dated: June 19, 2014
New York, New York

Respectfully submitted,

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Attorneys for Plaintiffs

Appendix 7

Petition for Individual Adult Change of Name

Civil Court of the City of New York
County of New York

-----X
In the Matter of the Application of :
JOE CLIENT :
For Leave to Assume the Name of :
ANNA CLIENT :
-----X

Index No.:

**PETITION FOR
INDIVIDUAL ADULT
CHANGE OF NAME**

TO THE CIVIL COURT OF THE CITY OF NEW YORK

JOE CLIENT, through her attorneys, hereby makes this petition:

1. Petitioner's name is JOE CLIENT and petitioner wishes to assume the name of ANNA CLIENT.
2. Petitioner was born on January 1, 1993 and is 21 years of age.
3. Petitioner was born in Miami, Florida. See the Certified copy of Florida Certificate of Birth, Cert. No. attached hereto as Exhibit A.
4. Petitioner resides at 1234 4TH St, Brooklyn NY 11216.
5. Petitioner has never been married.
6. Petitioner has no children.
7. Petitioner been convicted of a crime.
8. Petitioner has never been adjudicated bankrupt and has no judgments or liens of record against her.
9. There are no proceedings pending to which Petitioner is a party.
10. Petitioner has not made a previous application for a name change in this or any other Court.

13. The grounds for this application are as follows: Petitioner is known to her friends and associates as Anna and wishes to make it her legal name for all purposes.
14. Because publication of petitioner's name change and address would jeopardize her personal safety, petitioner respectfully requests that the court exempt her from publication requirements and seal the record. N.Y. Civ. Rights Law §64-a. Petitioner makes this request because publication would disclose to the public that petitioner is a transgender person. Violence against transgender people pervades our society. The court in *In re E.P.L.*, 26 Misc. 3d 336 (N.Y. Sup. Ct., Westchester County 2009), waived publication requirements for a transgender person even without a particularized history of violence or crime against him. The court found that "There exist numerous documented instances of those targeted for violence based on their sexual orientation or gender identity" such that petitioner "has a right to feel threatened for his personal safety in the event his transgender status is made public." *Id.* at 338. Similarly, the court granted a person leave to change the name on her Department of Education License and ordered past records sealed because of her reasonable fear of violence, discrimination, and harassment because she is transgender. *In the Matter of John Doe* (N.Y. Sup. Ct., Westchester County 2013). The court noted that the petitioner need not be "first be personally or professionally victimized" in order to have the protection of a sealed record. *Id.*
15. Should the Court require publication, Petitioner requests that the Court's order permit that notice shall be published in The New York Law Journal, a designated newspaper in New York County. The reason for such request is that it would result in financial hardship for Petitioner to publish in a newspaper that charges more expensive rates.

16. Should the Court find this Petition deficient in any aspect, Petitioner respectfully requests leave to renew the application with additional information as the Court may require.

WHEREFORE, your Petitioner respectfully prays that an order be granted permitting this requested change of name.

June , 2014

YISROEL SCHULMAN, ESQ.
NEW YORK LEGAL ASSISTANCE GROUP
7 Hanover Square, 18th Floor
New York, NY 10004

Elizabeth U. Cukor, Esq., Of Counsel
(212) 613-6506
Attorney(s) for Petitioners

VERIFICATION

Joe Client, being duly sworn, says that I am the Petitioner named above, that Petitioner has read the Petition and knows the truth of the contents thereof except for matters alleged to be on information and belief, and as to those matters, Petitioner believes them to be true.

JOE CLIENT

Sworn to before me this _____ day
of June, 2014

Signature of Notary Public

Biographies

Elizabeth (Ez) Cukor is a staff attorney in the Justice at Work and LGBT Law Projects at NYLAG. Ez represents LGBT clients in employment, housing, and name change matters. Ez also conducts outreach to and “Know Your Rights” trainings for LGBT communities, social service providers, and advocates. Ez is also a member of the New York City Bar Association’s LGBT Rights committee. Prior to law school, Ez worked at Planned Parenthood of Northern New England. Ez received a J.D. from Harvard Law School and a B.A. from Wesleyan University.

Laurie Izutsu has been a staff attorney with Brooklyn Legal Services since 2009. Laurie currently provides advocacy and representation on immigration matters, with an emphasis on serving same-sex bi-national couples, LGBT asylees, and LGBT victims of crime. Laurie initially represented low-income homeowners in foreclosure proceedings against predatory mortgage lenders as an Equal Justice Works AmeriCorps Legal Fellow. Subsequently, she assisted survivors of domestic violence with mental health issues in cases involving custody, orders of protection and divorce. Prior to joining Brooklyn Legal Services, Laurie served as an Immigration Staff Attorney for the United States Court of Appeals for the Second Circuit. She earned her Juris Doctor from Brooklyn Law School in 2005 and a Master's degree in Social Work from the University of Washington in 1996.

Ashe McGovern is an Equal Justice Works Fellow in the LGBT Law Project of New York Legal Assistance Group (NYLAG). At NYLAG, Ashe focuses on providing direct legal services and advocacy to low-income LGBTQ clients who experience discrimination or lack meaningful access to affirming healthcare and public benefits programs, particularly within aging communities and transgender and gender non-conforming communities. In law school, Ashe worked with the National Center for Lesbian Rights, National Gay and Lesbian Task Force and Transgender Rights Project of Lambda Legal. Ashe’s writing on LGBTQ legal issues has been published in the Huffington Post and Cornell Journal of Law and Public Policy. Ashe has presented on LGBTQ issues at advocacy conferences such as Creating Change and the Philadelphia Trans Health Conference. Ashe earned a B.A. magna cum laude from Cornell University in 2008 and a J.D. from Cornell Law School in May of 2013.

Elana Redfield is a Staff Attorney with the Sylvia Rivera Law Project, and the Director of SRLP’s Survival and Self Determination Project. Elana received her Bachelor’s degree from New York University in 2003, and her J.D. from the City University School of Law in 2009 with a clinical focus on immigration law. A longtime advocate for grassroots organizing strategies and community leadership in legal work, Elana co-authored “The Role of Lawyers in Trans Liberation: Building a Transformative Movement for Social Change” with Pooja Gehi and Gabriel Arkles. In her role as staff attorney, Elana assists hundreds of community members each year in name change proceedings, government identification issues, health care challenges and immigration proceedings. Elana is also one of SRLP’s primary trainers, having trained over 1000

service providers in transgender awareness, criminal justice, disability justice, and immigration issues.

Julia Sáenz is the 2013-2015 Hanna S. Cohn Equal Justice Fellow in Empire Justice Center's Rochester office. Julia created the LGBT Rights Project in September 2013 and through her project provides free legal services to low-income LGBT (Lesbian, Gay, Bisexual, Transgender) clients in Western and Central New York, with a focus on anti-discrimination in employment, education, housing, and public accommodations. Her work includes community outreach, civil rights litigation, and legislative advocacy.

Julia graduated *magna cum laude* from Boston University School of Law in May 2013. At BU Law, she worked in the Civil Litigation Housing, Employment, Family & Disability Clinic and externed with the ACLU of Massachusetts. As a summer legal intern, Julia worked for the New York State Division of Human Rights in Albany and the AIDS Action Committee of Massachusetts in Boston. She also volunteered with the Black and Pink pen pal program for LGBT prisoners by processing letters and sending advocacy materials to prisons across the United States. Prior to law school, Julia was the Outreach Project Director at the New York State Coalition Against Sexual Assault. In that role, she presented statewide trainings on anti-violence and LGBT cultural competency and engaged in legislative advocacy.

Julia graduated *summa cum laude* from New York University with her undergraduate degree in social work. While attending NYU, she concentrated her clinical and policy work on the LGBT communities and completed her social work fieldwork at the Ali Forney Center and Sanctuary for Families in New York City. Julia began her social justice advocacy in high school by serving as her school's Gay Straight Alliance President and GLSEN (Gay, Lesbian, Straight Education Network) NY Capital Region Youth Board Member.

Sonja Shield is a Senior Staff Attorney with the Comprehensive Rights Unit at Brooklyn Legal Services, a program of Legal Services NYC, where she represents LGBT people and HIV-positive people in housing court, welfare hearings, and in obtaining SSI benefits. Shield is also an adjunct professor at New York Law School, where she team-teaches a clinical course focused on client interviewing, counseling, and negotiation. Prior to joining SBLS in 2008, she worked as a staff attorney in the Civil Action Project at The Bronx Defenders, and clerked for Magistrate Judge Cheryl Pollak of the Eastern District of New York. She received her J.D. from NYU School of Law in 2005, where she was a Sinsheimer Scholar in the Root-Tilden-Kern program. Shield received a B.A. in History from Swarthmore College in 1997, and received a Masters in Social Work from NYU in 2004. In 2008, Sonja was awarded the Dukeminier Award for Best Sexual Orientation and Gender Identity Law Review Articles of 2007. Sonja's article, "The Doctor Won't See You Now: Rights of Transgender Adolescents to Sex Reassignment Treatment," was originally published in the NYU Review of Law and Social Change.