



A Great Unmet Need: Legal Aid Services for Low-Income Transgender Clients

By Catherine Sakimura and Daniel Redman, National Center for Lesbian Rights¹

Introduction

In 1995, many people were shocked when Tyra Hunter, a transgender African-American woman in Washington, D.C., was left to die by first responders



and emergency room technicians called to treat her after a car accident. Tyra—like many transgender people—had been unable to

afford expensive medical treatments related to gender transition. When first responders saw that she had male genitals, they spent precious minutes ridiculing her race and gender as she lay injured on the ground instead of helping her. At the emergency room, doctors refused to treat her. She died later that day, not just from her injuries, which were treatable, but from outright bigotry and neglect.

Over the last seventeen years, transgender people and their allies have made significant progress in expanding the legal protections available to them, with fifteen states and 143 municipalities now prohibiting discrimination based on gender identity. But these laws lack teeth without support from frontline attorneys like those at legal aid. The attitudes that killed Tyra are still pervasive, and lead to discrimination, harassment, and violence against transgender people to this day.

Transgender people face severe discrimination, harassment, and abuse in housing, employment, public accommodations, and access to services. This leads to extremely high levels of unemployment, poverty, and homelessness. One survey found that one in five transgender people have been homeless since they first identified as transgender. Transgender people are twice as likely to be living below the poverty level.²

Legal aid lawyers are in a unique position to make a huge difference in the lives of transgender people. Because many transgender people are poor and confront very high levels of discrimination, they have a great need for legal aid services. And, because the discrimination cuts across so many different parts of their lives, even small actions to advocate for them can have a tremendously positive impact. For example, helping a transgender client obtain a legal name and gender change may help them find a job, get a driver's license, or access public benefits.

Basic Terms

For most people, gender is a given — we were born male or female, we live our lives as male or female, and who we are as men or women is a core and unquestioned aspect of our identity. For transgender people, however, the sex they were assigned at birth does not match the gender that they feel and experience for themselves. Their gender is just as much a core part of who they are as anyone else, except that their bodies or how society views their gender is not the same as their innate sense of their own gender.

There are a few basic terms that you should know to help you learn about the needs of transgender clients:

The term *transgender* refers to people whose gender identity (how they feel about themselves) or gender expression (how other people view them) does not match the sex they were assigned at birth. This can include people who have taken steps socially, medically, or legally to change their gender. A person who was assigned female at birth but identifies as male can be called *female-to-male (FTM)* or a *transgender man*. A person who was assigned male at birth but identifies as female may be called *male-to-female (MTF)* or a *transgender woman*.

Gender identity refers to “a person's internal sense

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of being male, female, or something else. 'Trans' is sometimes used as shorthand for 'transgender.'³ Sexual orientation and gender identity are distinct characteristics. Many transgender people identify as straight or heterosexual, although some identify as lesbian, gay, or bisexual. For example, a female-to-male transgender man who is attracted only to women would be considered heterosexual, and a transgender man who is attracted only to men would be considered gay.

We use the term "transition" or "transitioning" to refer to the process a transgender person may go through to change their outer gender expression to match their internal gender identity. These steps may include everything from changing clothing and personal style to medical treatment or surgery. Not everyone is able to get medical care to change their gender, especially low-income people (these procedures and medicines can be very expensive)⁴ and people who are geographically isolated and far away from capable practitioners.

Providing Culturally Competent Services to Transgender Clients

Just as with all client populations, it is essential for advocates and staff to make both the office and the services they provide welcoming and respectful. All staff and volunteers should take these steps. Transgender clients may be discouraged from seeking an advocate's help if front desk staff or intake workers do not respect their gender identity.

1. Use your client's preferred name and gender pronoun

It is very important to respect your client's preferred name and gender pronoun, and to ask others involved in their case to do so. Even if your client has not been able to legally change his or her gender or name, he or she deserves to have his or her identity respected.

If you don't know, ask. If you are not sure of your client's preferred name or gender, let the client know that you want to make sure you are using the name and gender pronoun that makes the client most comfortable. Ask what your client would prefer.

It is not appropriate to ask a transgender person about his or her genitals or medical history in order to find out whether a client is transgender or out of curiosity. If a client's legal gender is an issue in the case, you

may need to ask your client questions about medical history and gender transition. If this is necessary, do so respectfully in the same manner that you would ask a client about any sensitive or private information that is necessary for your representation.

Use your client's name and gender pronoun consistently, based on your client's wishes.

Before using your client's preferred name and pronoun with others, ask whether the client would like you to do so. Some transgender people may not yet be fully open about their gender to everyone because they are in the process of transitioning. Some transgender people may be known to everyone by their preferred name and gender, but are not open about the fact that they are transgender. You should respect your client's confidentiality about his or her transgender status unless it is necessary to reveal it in court or administrative proceedings.

If your client is open about his or her gender identity, you should also ask others in your office to use the client's preferred name and gender, as well as opposing counsel, other service providers, and administrative and court staff. If your client has not legally changed his or her gender or name, you should still use his or her preferred name and gender in court documents.⁵ In this situation, the first time you use the client's preferred name and pronoun, you should provide a brief explanation.

2. Use gender-inclusive language with all clients

You cannot tell from just from looking at someone whether they are transgender, or what their gender identity is. Using inclusive language that does not assume the gender of any client sends a message that they are welcome and that it is safe for the client to talk about his or her gender identity.

Do not assume a person's gender identity based on their voice over the phone. Many people use "sir" or "ma'am" over the phone with all callers to show respect. But if they don't know the caller's gender, they may make the wrong assumption and offend not only transgender clients but also any woman who has a low voice or man who has a higher voice.

Provide bathroom keys and directions without assumptions about gender. Staff members who provide keys or bathroom directions should not assume which gendered bathroom a person would like to use. Rather than the staff person choosing which key or directions to offer, the staff should offer both and allow the person to choose.

3. *Make your office space welcoming*

Most transgender people have previously experienced misunderstanding or hostility from other service providers and the legal system. Because of these experiences, they may assume that a lawyer's office will be unfriendly to transgender people unless they receive a clear indication otherwise.

Small changes in your office can make it more welcoming to transgender clients. You can do things like put up a safe space sign, or other poster that has a positive message about transgender people. If you have a place where you provide resources for clients, include brochures or flyers on the rights of transgender people. Please contact the authors for information about client resources, or visit www.nclrights.org.

4. *Provide cultural competency training for all staff*

If possible, it is important to provide training for all staff on using gender-inclusive language and not making assumptions about clients' or visitors' gender identity. This training does not have to be expensive — there are some organizations that provide this training for free. The National Center for Lesbian Rights is beginning a project to provide training and curriculum on LGBT competency for legal aid offices. Please contact the authors if you are interested in learning more about this project.

Even if you cannot have a training, it can be helpful to start by setting aside a time for staff to discuss what it means to be transgender and why it is important for all staff to respect a client's gender identity. The key to providing competent services is understanding how gender assumptions affect transgender clients and being willing to learn from clients how to respect their gender. It is ok to start small and know that this will be an ongoing process for your office.

Representing Transgender Clients

Low-income transgender people experience all of the same legal issues that any low-income client may face. For example, a transgender client may need an advocate to help obtain wages being withheld from an employer, or public housing. Your office can provide these same essential services to low-income transgender clients by taking just a few simple steps to make your office welcoming and respectful.

Transgender people also experience a lot of discrimination because of their gender, and they are at high risk for poverty, unemployment, and incarceration as a result. Assisting transgender people in simple matters that are already a part of your practice areas

can have a huge impact on their lives. Many of these matters will require little additional legal research — and if a client's transgender status is an issue in the case, many LGBT legal organizations, including the National Center for Lesbian Rights, can provide you with free technical assistance. If you have such a matter, please contact the authors of this article.

1. *Housing discrimination*

Discrimination based on gender in public housing is prohibited, but many transgender people face public housing denials based on their gender identity. You may be able to help a transgender client obtain housing with something as simple as a letter explaining that the Fair Housing Act prohibition on sex discrimination includes discrimination against transgender people.

According to the recent report *Injustice At Every Turn*, nineteen percent of transgender people report being denied a home or apartment and 11% report being evicted because they were transgender or gender non-conforming.⁶ Of those who had sought housing in a homeless shelter, 29% were denied outright.

Many transgender people experience the most serious discrimination and harassment from landlords and building managers when they begin to transition. One transgender woman's landlord left comments on her voicemail calling her things like, "dude or woman or whatever" and referred to her as "it" in front of others. He then changed the locks on her apartment, without any notice. Even when there are threats of violence, transgender people who are receiving Section 8 vouchers or living in public housing may be afraid to complain for fear that they will be evicted.

2. *Identification documents*

Transgender people also face harassment and discrimination when their identification documents (driver's license, birth certificate, Social Security records, etc.) do not match their gender presentation and chosen name. Non-matching documents can lead to outing a transgender person to a hostile service provider or employer, complicate benefits applications, and lead to increased police harassment. According to *Injustice At Every Turn*, only one-fifth (21%) of transgender people have been able to update all of their IDs and records with their new gender and one-third (33%) have not updated any of their IDs or records. Low-income people and people of color are most likely to lack access to corrected documents.⁷

This is an area where legal aid lawyers can make a big difference with just a little education and effort. In

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most states, it is not difficult to correct identification documents to reflect — at least — the correct name of a transgender person after a simple name change action. In others, it is possible to change the gender marker (“male” or “female”) on a birth certificate or driver’s license. The authors of this article are available to provide technical assistance to legal aid attorneys seeking to help transgender clients obtain correct documents. Another resource is the Transgender Law Center publication “*ID Please: A Guide to Changing California & Federal Identity Documents to Match Your Gender Identity*.”⁸

Several stories highlight how important correct documents can be for basic safety for transgender people:

- An employer refused to hire a transgender woman because her name did not match her identity documents.
- Employees at a DMV office refused to serve a transgender man because his driver’s license said female and he presented as male. His driver’s license was suspended because he could not find someone to help him change his name and gender on the license.
- When only some of a person’s documents are updated, that can also cause problems. A transgender man had corrected the name and gender on all his state identification, but not his birth certificate from another state. He was denied a real estate license because all of his identification documents did not match.

3. Domestic violence

Finally, low-income transgender clients need representation for domestic violence cases. Transgender people experience domestic violence at the same rates as non-transgender people.

These survivors experience the same cycles of power and control with their abuser as any survivor. Additionally, the abuser may use the survivor’s transgender status against the survivor. For example, the abuser may threaten to out the survivor at work and have him or her fired. Or the abuser may prevent the survivor from obtaining or continuing medical care for his or her transition. Or the abuser can use the threat that no one else could possibly love the survivor because of his or her gender.

If a transgender survivor is being abused by a

dating partner, the same restraining order procedures available to address any violence between dating partners in your state can be accessed. If the transgender person is married to his or her abuser, spousal domestic violence procedures should apply. In some situations in some states, the legal gender of the transgender survivor may affect the relief available to him or her. If you have a case that may raise this issue, please contact the authors for technical assistance and resources.

Transgender survivors also especially need help finding shelters and other emergency assistance that will admit them and not discriminate against them. As with any DV situation, your assistance in these cases can be literally lifesaving.

For help finding shelters and emergency services, other technical assistance, assessment tools, and other resources for assisting domestic violence survivors who are transgender or lesbian, gay, or bisexual, contact The Northwest Network at (206) 568-7777 or www.nwnetwork.org.

Conclusion

There is a tremendous need for legal aid services to transgender clients. Many do not reach out to legal aid offices because they are afraid of experiencing the same discrimination and harassment they face in nearly every part of their lives. By creating a welcoming environment in your office, you send a message to transgender people that there is at least one place in their lives where they will be treated with dignity and respect. By taking a few simple steps and being willing to advocate for transgender clients in a few basic areas, you can not only have a great impact on your client’s life, but also educate other services providers and courts about the needs of transgender people.

- 1 Catherine Sakimura is a staff attorney and director of the National Center for Lesbian Rights’ Family Protection Project, which works to improve access to family law services for low-income LGBT parents and their children, with a focus on increasing services to families of color. This project provides free legal information to low-income LGBT parents and their children; trains and supports attorneys providing free and low-cost services to these families; and works in coalition with organizations serving communities of color to provide culturally competent services to families of color. She also works on NCLR’s litigation docket, particularly on family-related cases.

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- 2 Transgender Law Center, *State of Transgender California Report: Results from the 2008 California Transgender Economic Health Survey* (2008), available at <http://www.transgenderlawcenter.org>.
- 3 American Psychological Association, "Answers to your questions about transgender people, gender identity, and gender expression" available at <http://www.apa.org/topics/sexuality/transgender.aspx>
- 4 In some states (like California), transgender people may have access to Medicaid coverage for some transition-related medical expenses.
- 5 Courts have noted that it is appropriate to refer to transgender litigants by their preferred pronouns and names. E.g., *Schwenk v. Hartford*, 204 F.3d 1187, 1192, n.1 (9th Cir. 2000) (Following "convention of judicial decisions" referring to transgender individuals by their choice of pronoun); *Farmer v. Haas*, 990 F.2d 319, 320 (7th Cir. 1993) ("[Appellant] prefers the female pronoun and we shall respect her preference").
- 6 National Center for Transgender Equality & National Gay & Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), available at <http://www.transequality.org>.
- 7 Id.
- 8 This publication is available at: <http://www.transgender-lawcenter.org>.