

U.S. Transgender Policy

OVERVIEW

The transgender community experiences an overwhelming amount of mistreatment and discrimination. There are startling disparities between transgender people and the U.S. population when it comes to the most basic elements of life, such as finding a job or a home. Transgender people also experienced harassment and violence at alarmingly high rates. **There is no federal law designating protection or equal treatment for transgender people. However, there should be.**

Important Terms

Sex: identification of a person as male or female according to their biological makeup.

Gender Identity: A person's internal sense of being male or female that is measured across a spectrum.

Transgender: When a person's gender identity is not congruent with the other sex-demarking characteristics. Generally used as an umbrella term for different groups such as gender queer, cross-dressers and transsexuals

Sexual Orientation: A person's physical, romantic and/or emotional attraction to men or women and is different than gender identity.⁸

80%

Of young trans people have experienced **harassment at school**

50%

Of trans workers said they had been **fired, not hired or denied a promotion** because of their gender status

90%

Of trans workers say they've dealt with **discrimination on the job**

20%

Of trans people said they had been **denied a place to live**

80%

Of Trans people have attempted **suicide**, compared to **1.6%** of the general population

6



6 out of 10 of transgender Americans have avoided using public restrooms for **fear** of confrontation, saying they have been harassed and assaulted⁹

Myths and Misconceptions

The Inadequacy of the 14th Amendment

Currently, the fourteenth amendment assumes that transgender discrimination is the same as sex discrimination. This has resulted in inadequate protection for transgender individuals because their legal needs are more specific and cannot be addressed through a binary concept of sex and gender.⁵

Gender Expression vs. Sexuality

Gender identity and sexuality are completely separate attributes of a person and don't have to be related. Transgender people may be straight, gay, bisexual, etc. Although there has been an increase in policy protecting against discrimination because of sexual orientation, it should not be confused with the minimal development of transgender civil rights.⁷

Root Problems of U.S. Transgender Policy

1 Legislative Avoidance

- Historically small size and closeted existence of the transgender community
- Difficult for their policy issues to create public concern
- Lack of salience is a hurdle to access on the policy agenda ⁸

2 Government Identification / Approval

- Transgender identities are public
- Widespread availability of public identification records
- Risk of being "outed" can lead to discrimination
- Many transgender individuals must rely on government approval of legal name and sex changes on official documents for their identity to be recognized ⁸

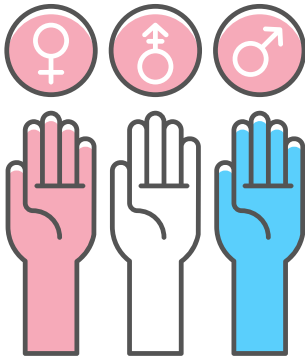
3 Inconsistent Bureaucratic Policy Making

- States have the power to amend regulations based on sex reassignment.
- There is no uniformity in policy due to the varying standards regarding what constitutes as a fully transitioned transgender person
- Additional hardships include costly sex reassignment surgeries and difficult administrative procedures ¹⁰

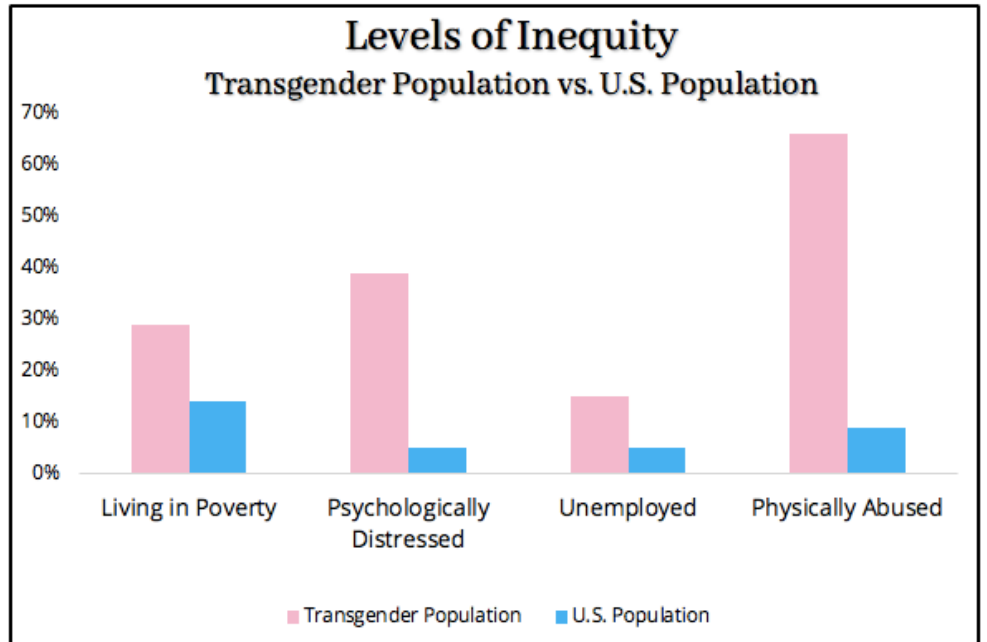
4 Sex as a Binary Concept

- Societal norms of gender and sexuality have changed
- But the government continues to view sex as a binary concept and rely on gender stereotypes to shape decisions. ⁷

TRANS RIGHTS
ARE HUMAN RIGHTS



“ We will not be erased ”



The Solution

Fourth Amendment

The right to privacy can be applied outside of the precedent of criminal rights and could protect transgender civil rights. This would allow transgender individuals the right to express themselves how they choose – to preserve their “dignity and bodily integrity” ⁵

Structural Level Transgender Inclusion

States with structural-level transgender inclusion such as; protection from discrimination in schools, ability to change name and gender on identifying documents - predicted better mental health and socio-economic status. Stigmatized policies that exclude transgender individuals must be eliminated. ²

Title IX

Title IX is a 1972 law banning discrimination on the basis of sex in federally funded programs. Title IX was used by the Obama administration to protect LGBTQ students against harassment on the basis of sex stereotypes. This would protect students, a more vulnerable population within the transgender community. ¹⁰

References

1. Anderson , Ryan T. "A Brave New World Of Transgender Policy ." *Harvard Journal of Law and Public Policy* , vol. 41, no. 1, 2018, pp. 309–354. ProQuest, <http://libproxy.lib.unc.edu/login?url=https://search.proquest.com/docview/2062629048?accountid=14244>.
2. Bois, Steve N. Du, et al. "Examining Associations Between State-Level Transgender Policies and Transgender Health." *Transgender Health*, vol. 3, no. 1, 2018, pp. 220–224., doi:10.1089/trgh.2018.0031.
3. Gillig, Traci K., et al. "More than a Media Moment: The Influence of Televised Storylines on Viewers' Attitudes toward Transgender People and Policies." *Sex Roles*, vol. 78, no. 7-8, 2017, pp. 515–527., doi:10.1007/s11199-017-0816-1.
4. Green, Erica L., et al. "'Transgender' Could Be Defined Out of Existence Under Trump Administration." *The New York Times*, The New York Times, 21 Oct. 2018, www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html.
5. Holtzman , Elise. "I Am Cait, but It's None of Your Business: The Problem of Invasive Transgender Policies and a Fourth Amendment Solution' ." *Florida Law Review*, vol. 68, no. 6, Nov. 2016, pp. 1943–1976.
6. James, Sandy E., et al. "The Report of the 2015 U.S. Transgender Survey." *Transequality.org*, National Center for Transgender Equality , Dec. 2016, www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf.
7. Steinmetz, Katy. "The Transgender Tipping Point." *Time*, Time, 29 May 2014, time.com/135480/transgender-tipping-point/.
8. Taylor, Jami Kathleen. "Transgender Identities and Public Policy in the United States." *Administration & Society*, vol. 39, no. 7, 2007, pp. 833–856., doi:10.1177/0095399707305548.
9. Trotta, Daniel. "U.S. Transgender People Harassed in Public Restrooms: Landmark Survey." | *Reuters*, Thomson Reuters, 8 Dec. 2016, www.reuters.com/article/us-usa-lgbt-survey/u-s-transgender-people-harassed-in-public-restrooms-landmark-survey-idUSKBN13X0BK.
10. Watkins, Paul J., and Edward Moreno. "Bathrooms without Borders: Transgender Students Argue Separate Is Not Equal." *The Clearing House: A Journal of Educational Strategies, Issues and Ideas*, vol. 90, no. 5-6, 2017, pp. 166–171., doi:10.1080/00098655.2017.1361285.