

Transgender 101: Terms and Considerations for Officers Of the Court

Terminology

Gender Non-Conforming: Not matching gender expectations, such as when a person's gender expression or identity is not consistent with expectations about the sex they were assigned at birth.

Transgender (adj.): Describes a person whose gender identity is different from the sex they were assigned at birth. Not used as a noun or adverb.

Assigned Sex: The sex a person is given at birth, usually based on genitals or chromosomes.

Gender Identity: A person's innate sense of who they are and what their gender is.

Transition: The process of changing ones life or body to bring it into harmony with their gender identity.

Transphobia: Fear, dislike, bias, harassment or negligence based on the perception that a person transgresses gender norms.

Cisgender: A term to describe a person who is not transgender.

Use the Preferred Names and Pronouns Whenever Possible

Transgender people frequently choose to use a name that affirms their gender identity, even if it is not what is on the legal documents. If a name has been legally changed but the old name is being used in a court proceeding, make sure to amend the court records to reflect the new legal name. If the individual has not had a legal name change, a preferred name may be listed as an AKA and notation can be made in the file to use that name to address the party.

Judges should make every effort to use pronouns and salutations that affirm the party's gender identity. If the person presents themselves as female, they should be addressed using she/her/Ms./Mrs. If the party presents themselves as male, they should be addressed as he/him/Mr. If the judge or court personnel are not sure of how the party identifies their gender, it is preferable to ask which pronouns the party would prefer to use. This could be done in a bench conference or sidebar.

Challenge Assumptions about Health Care

It's a common myth that gender transitions are defined by a particular surgery or medical procedure. In fact, genital surgery (long used as the defining factor for the recognition of gender) is extremely uncommon. Less than 25% of all transgender people have these procedures, whether by choice or because the care is expensive and remains uncovered by most public and private health insurance. The reality is that gender identity – our internal understanding of our gender - is innate. The process of gender transition for most people is better described as a process of gender affirmation – the act of harmonizing our bodies with our

internal sense of self. This process looks different for different people. Therefore, the prevailing standard for medical evaluation of gender transition is now whether a person has undergone appropriate clinical treatment, as prescribed for that particular individual.

Anticipate Non-Traditional Family & Community Connections

Transgender people experience overwhelmingly high rates of family rejection. As a result, transgender people may be more likely to choose family than rely on traditional family relationships. Community organizations are often a source of support and accountability in a way that others may rely on family members.

Consider the Impact of Structural Inequality

Many transgender people, solely by changing their gender, are subjected to circumstances that non-transgender people do not experience. Transphobic violence may result in increased police contact or flight from a home country. Staggering levels of bias against transgender people in the workplace (a recent study estimated that 97% of transgender people experience serious workplace discrimination) may result in long periods of unemployment, failure to get jobs, or difficult choices to engage in criminalized activities in order to survive. Transgender people are disproportionately homeless and disproportionately likely to be arrested as a result. These factors are especially severe amongst people of color and low-income people.

Consider the Disparate Impact of Imprisonment

Prison and Jail are not meant to be a comfortable place for anyone. However, at present our carceral system adds another layer to the humiliation and punishment of prisons and jails by housing transgender people by their assigned sex at birth. This is typically determined by a thorough genital evaluation equivalent to a strip search, to which only transgender and gender non-conforming people are subjected. Once placed in such facilities, transgender people are denied healthcare, hairstyles and clothing that would be gender-affirming. They also face increased violence and vulnerability from guards and other inmates, and are frequently forced into solitary confinement because the facilities do not know how to accommodate them. These factors make prisons and jails disproportionately punitive for transgender people, and suggest alternatives like outpatient programs and other alternatives to incarceration.

RESOURCES

Injustice At Every Turn: National Transgender Discrimination Survey
http://transequality.org/PDFs/NTDS_Report.pdf

How Sex Changed: A History of Transsexuality In The United States
Joanne Meyerowitz, Harvard University Press, 2004

Disposable People – A Report By The Southern Poverty Law Center
<http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2003/winter>

Queer Injustice – The Criminalization of LGBT People In The United States
Joey Mogul, Andrea Ritchie and Kay Whitlock, Beacon Press, 2011
www.queerjustice.org