Nonbinary Identities and the Law
ROADMAP

• About Transcend Legal
• Terminology
• Working with nonbinary clients
• Statutory/regulatory protections
• Identity documents; GRA
TERMINOLOGY

• Cisgender
  – Prefix “cis” = same
  – Identifies as what they were assigned at birth

• Transgender
  – Prefix “trans” = across
  – Identifies as something other than what they were assigned at birth

• Transgender woman/trans woman
  – A woman who was assigned male at birth

• Transgender man/trans man
  – A man who was assigned female at birth

• Nonbinary person
  – A person who does not identify squarely as male or female
WORKING WITH TRANSGENDER CLIENTS
MEETING WITH THE CLIENT

• Use chosen name
• Use correct pronoun
  – “What is your pronoun?” / “What pronoun do you use?”
  – Singular they
• Also use correct name & pronoun when speaking to the judge
  – Footnotes
• Mistakes – correct & move on
• Bathrooms
• Security desk
• Forms and templates
STATUTORY & REGULATORY PROTECTIONS
STATUTORY & REGULATORY PROTECTIONS

• Federal law
  – Title VII ([EEOC v. R.G. & G.R. Harris Funeral Homes](#))
  – ADA ([42 U.S.C. § 12101](#))
  – ACA Section 1557 ([45 C.F.R. § 92.1](#))

• New York law
  – [GENDA](#)
  – Health insurance
    • Insurance Circular Letter No. 7 (2014) – gender dysphoria coverage
    • Insurance Circular Letter No. 12 (2017) – sex specific care
    • Insurance Circular Letter No. 8 (2019) – “sex” includes gender identity
IDENTITY DOCUMENTS
IDENTITY DOCUMENTS

**Federal documents**
- Only M or F
- Issuance of SS # & Selective Service
- *Zzyym v. Pompeo*

**State documents**
- Photo IDs vs. birth certificates
- NYC vs. NYS
- Interplay with federal documents/systems

**Gender Recognition Act** *(A3457/S56)*
- X gender markers
- Self-attestation standard
- Court orders
- “Parent” on birth certificates & parental name changes
- Publication requirement

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<table>
<thead>
<tr>
<th>Grade</th>
<th>Description</th>
<th>States</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>No provider certification required, no gender neutral option (2 states)</td>
<td>Massachusetts (2015), Rhode Island (2019)</td>
</tr>
<tr>
<td>B</td>
<td>Easy-to-understand form, certification by a limited range of licensed professionals (2 states)</td>
<td>Nebraska (2010), West Virginia (2015)</td>
</tr>
<tr>
<td>C</td>
<td>Burdensome process requirements but does not require proof of surgery, court order, or amended birth certificate (2)</td>
<td>Michigan (requires updated passport), Utah (must provide an updated passport or birth certificate, has an X option)</td>
</tr>
<tr>
<td>D</td>
<td>Unclear, unknown or unwritten policy (4 states + 4 territories)</td>
<td>Mississippi, Montana, North Dakota, South Dakota, American Samoa, Guam, Northern Mariana Islands, U.S. Virgin Islands</td>
</tr>
<tr>
<td>F</td>
<td>Proof of surgery, court order, or amended birth certificate required (9 states)</td>
<td>Alabama, Georgia, Iowa, Kentucky, Louisiana, Oklahoma, South Carolina, Tennessee, Texas</td>
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</tbody>
</table>

* These states have announced they will be issuing X designations but they are not yet available.

For more information, please contact: Art Christian, State Policy Director, National Center for Transgender Equality

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National Center for Transgender Equality State Driver’s License Policy Grades
TRANSGENDER NAME CHANGES


- “The law does not distinguish between masculine and feminine names, which are a matter of social tradition. Some names are traditionally associated with one gender; some with the other; some with either.”

- “Apart from the prevention of fraud or interference with the rights of others, there is no reason—and no legal basis—for the courts to appoint themselves the guardians of orthodoxy in such matters.”
TRANSGENDER NAME CHANGES


- “There is no sound basis in law or policy to engraft upon the statutory provisions an additional requirement that a transgendered-petitioner present medical substantiation for the desired name change.”
PUBLICATION REQUIREMENT

• Legal notice
• Classified ad
  – Old name
  – New name
  – Date of Birth
  – Place of Birth
  – Address
• $45-150
PUBLICATION WAIVER

- N.Y. Civil Rights Law §64-a
- Waiver of publication and sealing of records
- Can request waiver if publication would “jeopardize ... personal safety”
- Totality of the circumstances
- Court cannot deny request for waiver “solely on the basis that the applicant lacks specific instances of or personal history of threat to personal safety.”
- *In re J.A.L., Jr.*, 53 Misc.3d 1220(A) (Sup. Ct., Suffolk County 2016)
- Judges still have some discretion
THANK YOU!

Noah, You were very kind to help me and my family out. You gave me a new name and your love, and that's what it's all about! From

(347) 612-4312  carrowood@transcendlegal.org  @transcendlegal
Non Binary Survivors and Intimate Partner Violence

- Data on this community not well captured—often combined with data on trans and gender non-conforming folks


- National Domestic Violence Hotline in October 2019: “In an effort to accurately identify those that reach out to us, we updated our gender data gather in 2015 to include contacts that identify as non-binary, trans female, trans male and others. Individuals that report identifying as non-binary have increased over 220% in the past year, with similar trends for folks identifying as trans male and trans female.”
A Few Issues....

- DV-related providers and other service providers continue to view domestic violence through a “violence against women” paradigm
- Recognizing and responding to survivors who are as trans masculine or trans feminine, cis males (G,B, straight) is only recently beginning to increase
  - Even less experienced recognizing and supporting survivors outside of the gender binary
- Identity documents as barrier to supports and services (actual or perceived)
- Sex-segregated shelter and emergency housing
- Screening for domestic violence in medical, mental health, other settings
New Resource!

WITTEN ON THE BODY

Letters from Trans and Non-Binary Survivors of Sexual Assault and Domestic Violence

EDITED BY LEXIE BEAN

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