CENTER FOR ELDER LAW & JUSTICE

LGBTQ DV Roundtable Annual Meeting

Expanding Your Reach

Presentation By Christopher Phillips (He/Him/His)

Please Note that the Information Contained in this Informational Presentation does not Constitute Legal Advice and does not Establish an Attorney-Client Relationship

GOALS FOR THE PRESENTATION

- Brief Introduction to Aging with Pride Project at CELJ
- Highlight Historical Context of Disparities Faced by LGBTQ Community
- Trace History of CELJ's Aging with Pride Project
- Glean Tips on How to Build Inclusive Practices

AGING WITH PRIDE PROJECT

FREE LEGAL SERVICES FOR LGBTQ OLDER ADULTS

Services Offered

- Advance Planning
  - Power of Attorney; Health Care Proxy; Last Will & Testament
- Name Changes
- Gender Marker Changes
- Discrimination Complaints
- Long Term Care Resident Advocacy
- Legal Health "Check-Ups"

Eligibility for Services

- Adults Ages 50+
- 200% of the Federal Poverty Level
- Being Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Plus (LGBTQ+)

CENTER FOR ELDER LAW & JUSTICE

LIVED EXPERIENCES OF LGBTQ ADULTS

PROVIDING PERSPECTIVE

THREE GENERATIONS OF LGBTQ OLDER ADULTS

The Future of LGBT+ Aging: A Blueprint for Action in Services, Policies, and Research, Fredriksen-Goldsen, et al. (2016).

Invisible Generation
(Born 1920's)
Great Depression & WWII;
Limited Disclosure of LGBTQ Identities

Silent Generation
(Born 1930's/1940's)
Coming of Age During McCarthy Trials;
Criminalization of Same-Sex Relations

Pride Generation
(Born 1950's/1960's)
Tremendous Social Change & Civil Rights Movements;
1980's AIDS Crisis

2011 – Don't Ask Don't Tell Policy Repealed

2015 – Marriage Equality in All 50 States

DISPARITIES FACED BY LGBTQ INDIVIDUALS

- Fear of being "outed" anytime services are sought
- Distrust of authorities; History of self-reliance
- Increased social isolation
- Aging alone and aging networks of support
- Lack of access to affirming healthcare
- Feelings of "this is what it means to be LGBTQ"

Hesitancy to Access Services

HOW CAN WE HELP?

TIPS FOR SERVICE PROVIDERS IN BUILDING LGBTQ INCLUSIVE PRACTICES

WHY BUILD INCLUSIVE PRACTICES?

Rule 1.1 - Competence

- (a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- (b) A lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.
- (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.

AGING WITH PRIDE PROJECT

FREE LEGAL SERVICES FOR LGBTQ OLDER ADULTS

Services Offered

- Advance Planning
  - Power of Attorney; Health Care Proxy; Last Will & Testament
- Name Changes
- Gender Marker Changes
- Discrimination Complaints
- Long Term Care Resident Advocacy
- Legal Health "Check-Ups"

Eligibility for Services

- Adults Ages 50+
- 200% of the Federal Poverty Level
- Being Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Plus (LGBTQ+)

CENTER FOR ELDER LAW & JUSTICE

THE EVOLUTION OF THE AGING WITH PRIDE PROJECT

Step 1 – Identifying a Need

- CELJ Staff began attending the Pride Center of Western New York's Silver Pride Coffee Hours, out of curiosity
  - Social meet up group held by local Pride Center
- Spoke with community members about the issues that they were facing
- Saw a need for a dedicated attorney to work with this population to address unique needs
  - Many members did not know where to find affirming (and affordable) legal services providers

THE EVOLUTION OF THE AGING WITH PRIDE PROJECT

Step 2 – Finding the Funding

- Find funding to help "pilot test" program, to then present the work to other funders
  - Fellowship from the Borchard Foundation Center on Law & Aging
- Based on the work, try to find more sustained funding
  - Funding from New York Bar Foundation and other sources within agency

Borchard Foundation
Center on Law & Aging

THE NEW YORK BAR FOUNDATION

THE EVOLUTION OF THE AGING WITH PRIDE PROJECT

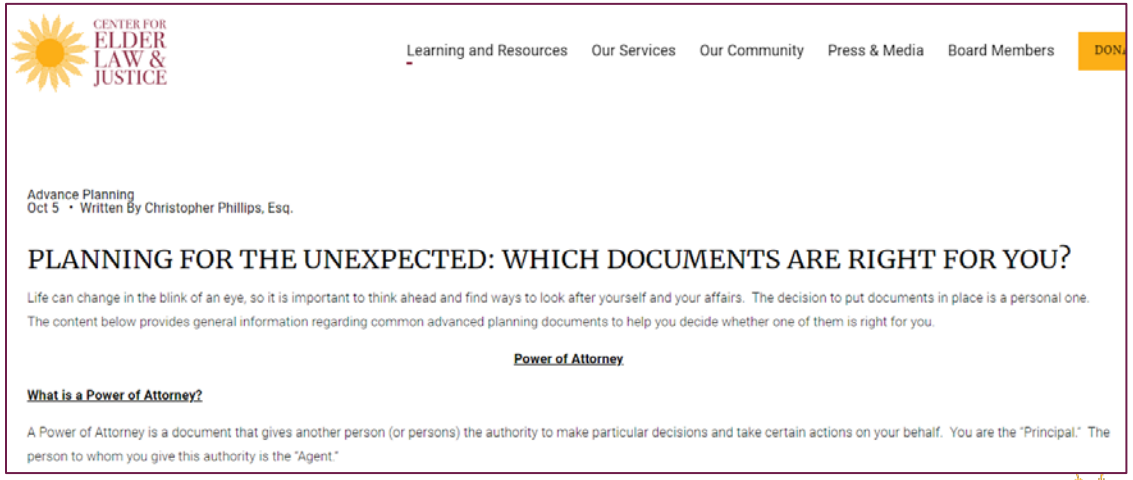
Step 3 – Preparing Your Practice

- Attending "cultural competence" trainings with Pride Center of Western New York
- Updating intake questionnaires to include more diverse pronouns, gender identities, relationship statuses, and family structures
- Creating a recognizable name and branding materials with LGBTQ+ representation
- Identifying goals and work plan

THE EVOLUTION OF THE AGING WITH PRIDE PROJECT

Step 4 – Finding the Clients

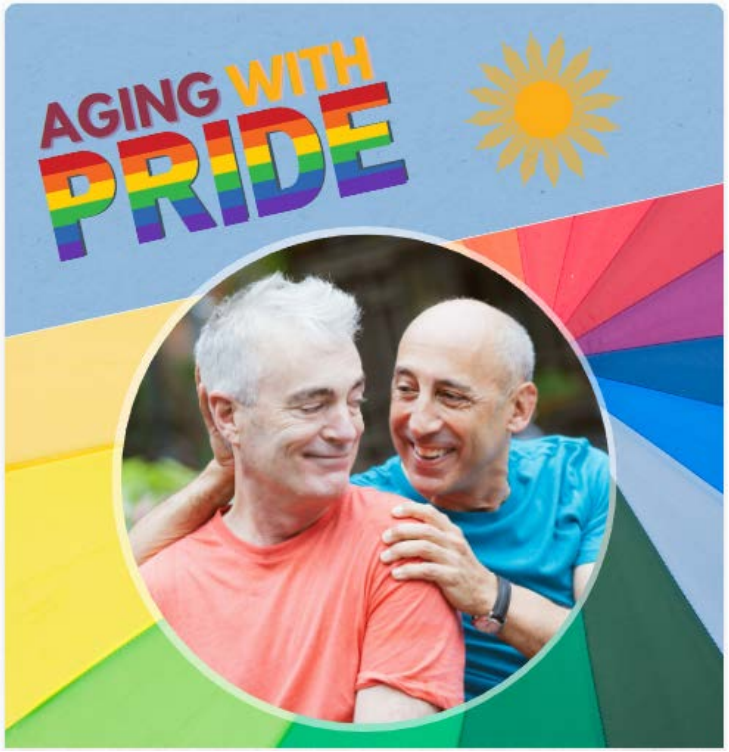
- Attending Silver Pride Coffee Hours
  - Virtually and In-Person
- Disseminating Blog and Social Media Posts
- Providing Educational Presentations
  - Name Changes, Advance Planning, Scam Prevention
- Bringing "Mobile Legal Unit" to Coffee Hours
  - Attorney-Paralegal team provides brief presentation, and then is available for one-on-one consultations



THE EVOLUTION OF THE AGING WITH PRIDE PROJECT

Step 5 – Keeping the Clients

- Intentionally prioritize this work and continue to be a presence in the community
  - Continued attendance at Coffee Hours and other events hosted by Pride Center
- Listening to feedback from the community members
  - Name change from "Silver Pride Partnership" to "Aging with Pride Project"
- Encouraging clients to spread the word



BREAK OUT OF YOUR SILO
CONNECT WITH OTHER PROFESSIONALS

- Identify Legal Services Providers and Firms who are doing this work in your area
  - Empire Justice Center, Lambda Legal, Legal Services Providers, Private Practitioners
- LGBTQ Sections and Committees with the New York State Bar Association and Local Bar Associations
- Connect with LGBTQ Health Providers in your Area
- Contact Local SAGE Affiliates or Pride Organizations
  - Volunteer with those organizations, Join Boards

NIAGARA PRIDE

sage Advocacy & Services for LGBTQ+ Elders
We refuse to be invisible®

WHERE TO GO FROM HERE?

OVERVIEW OF STEPS TO TAKE TO BUILD INCLUSIVE PRACTICES

TIPS FOR SERVICE PROVIDERS TO BUILD INCLUSIVE ENVIRONMENTS

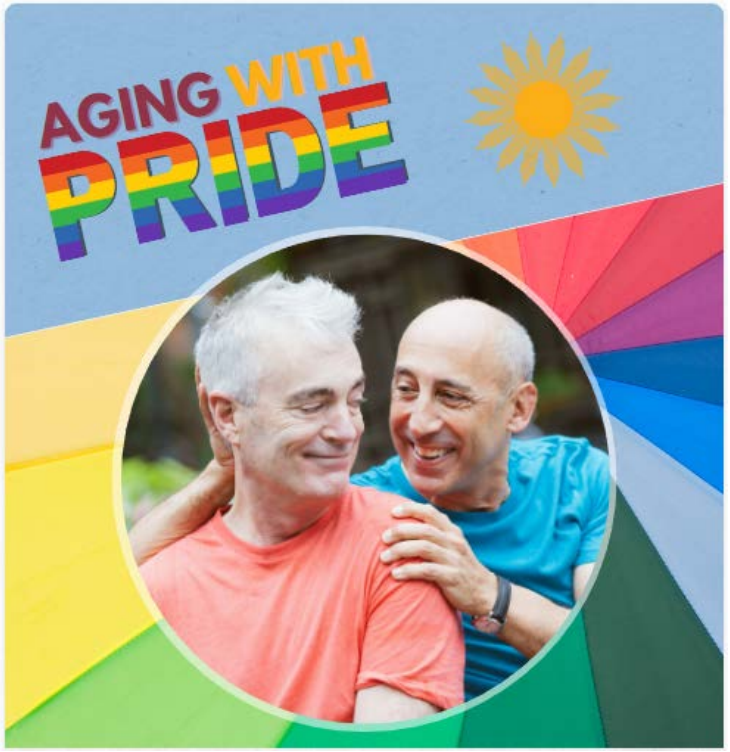
Internal Practices

- Attend "Cultural Competence" Training
- Update Intake Procedures
  - Pronouns; Gender Identity; Relationship Status; and Family Structures
- Create/Revise Non-Discrimination Policy
- Highlight Confidentiality Policy
- Always Respect Person's Pronouns and Identity

TIPS FOR SERVICE PROVIDERS TO BUILD INCLUSIVE ENVIRONMENTS

External Practices

- Rebranding External Marketing
- Have LGBTQ-Friendly Publications and Materials in Common Areas
- Partnering with LGBTQ Organizations
- Cultivate Relationship with Community Members
- Listen to the feedback of those that you are serving



HOW TO REACH ME

CENTER FOR ELDER LAW & JUSTICE

Address

Center for Elder Law & Justice

438 Main Street

Suite 1200

Buffalo, New York 14202

Christopher J. Phillips
Staff Attorney

CENTER FOR ELDER LAW & JUSTICE

Main Intake Line

(716) 853-3087

My Direct Extension

(716) 853-3087, ext. 283

Email

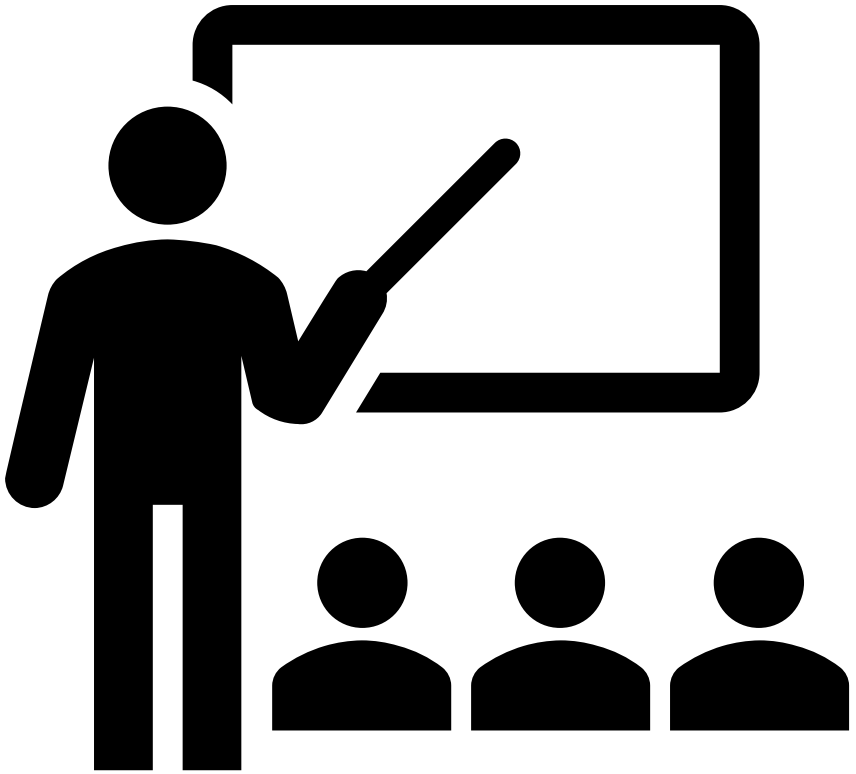
cphillips@elderjusticeny.org

QUESTIONS OR COMMENTS?

Opening the Shelter Doors to Trans & Non-Binary Survivors

Empire Justice Center

Today's Presenters



Amy Schwartz-Wallace, Esq.

Director of Training &

Technical Assistance

aschwartz@empirejustice.org

Lettie Dickerson, Esq.

Civil Rights Practice Group-

LGBTQ Legal Rights Staff Attorney

ldickerson@empirejustice.org

Empire Justice Center

Goals for Today

- Provide a brief overview of language, the prevalence of intimate partner violence in TGNCNB communities

- How access barriers continue to impact victim safety

- Outline the various legal bases for inclusive practices in residential (and non-residential) domestic violence programs including:
  - State and federal laws and policies
  - Funding conditions from DV program grantmakers and their licensing agency
  - Mechanisms for complaints

Empire Justice Center

Implicit Bias: Examine Your Own Bias

- "Implicit bias is a form of bias that occurs automatically and unintentionally, that nevertheless affects judgments, decisions, and behaviors." https://diversity.nih.gov/sociocultural-factors/implicit-bias

- Harvard Surveys on a number of implicit bias topics: https://implicit.harvard.edu/implicit/education.html

- What may be your own or institutional biases that come into play when your organization is delivering services?

Some Statistics

- **NCTE's 2015 US National Survey** (pg 198 *et seq*.): More than half (54%) of respondents experienced some form of intimate partner violence. More than one-third (35%) experienced physical violence by an intimate partner, compared to 30% of the U.S. adult population. Nearly one-quarter (24%) experienced severe physical violence by a current or former partner, compared with 18% of the U.S. population. https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf

- **National Domestic Violence Hotline** lists some statistics regarding transgender and non-binary survivors
  - https://www.thehotline.org/resources/domestic-abuse-transgender-non-binary-survivors/
    - More likely than cisgender callers to also report sexual violence: between 19-22.5% of transgender callers reported sexual violence
      - Vs. 14% of their cisgender LGB peers
    - Significantly less likely to have family assistance
      - Only 1 in 8 transgender or nonbinary survivors received support from someone in their family after experiencing abuse
    - More likely to experience verbal abuse
      - Verbal abuse often connected with transgender or nonbinary identity (client being called "it" or misgendered, or deadnamed by abuser, told they're "not a real man" or "real woman", or "only I could love a freak like you", etc.)

Table 15.8: Intimate partner violence involving physical harm

Type of intimate partner violence	% of USTS respondents	% in U.S. population (NISVS)
Pushed or shoved	30%	23%
Slapped	24%	19%
Made threats to physically harm them	20%	--
Forced them to engage in sexual activity	19%	--
Hit them with a fist or something hard	16%	12%
Slammed them against something	14%	9%
Hurt them by pulling their hair	11%	6%
Kicked	10%	6%
Tried to hurt them by choking or suffocating them	7%	9%
Beat them	6%	6%
Used a knife or gun against them	3%	3%
Burned them on purpose	2%	1%
Any physical violence	**35%**	**30%**
Any severe physical violence	**24%**	**18%**
One or more experiences listed	**42%**	---

Overall, 42% of all survey respondents reported experiencing some form of intimate partner violence involving physical harm, including the threat of physical violence, over their lifetime. Respondents who have done sex work (67%) or who have experienced homelessness (61%) were more likely to report intimate partner violence

NCTE's Survey respondents self-reported, by nearly every measure, trans victims of DV experienced higher rates and more severe forms of abuse from their intimate partner.

Empire Justice Center

NIH Literature Analysis Study (2021)

- https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7427218/
  - Objectives: To systematically review the quantitative literature on prevalence and correlates of IPV in transgender populations. They identified 85 articles from 74 unique data sets (total = 49,966 transgender participants).
  - Search Methods: Authors searched research databases (PubMed, CINAHL), gray literature (Google), journal tables of contents, and conference abstracts, and consulted experts in the field.
  - Selection Criteria: They included all quantitative literature published before July 2019 on prevalence and correlates of IPV victimization, perpetration, or service utilization in transgender populations. There were no restrictions by sample size, year, or location.

Concluded: Transgender individuals experience a dramatically higher prevalence of IPV victimization compared with cisgender individuals, regardless of sex assigned at birth. IPV prevalence estimates are comparably high for assigned-male-sex-at-birth and assigned-female-sex-at-birth transgender individuals, and for binary and nonbinary transgender individuals, though more research is needed.

Public Health Implications: "Evidence-based interventions are urgently needed to prevent and address IPV in this high-risk population with unique needs. Lack of legal protections against discrimination in employment, housing, and social services likely foster vulnerability to IPV. Transgender individuals should be explicitly included in US Preventive Services Task Force recommendations promoting IPV screening in primary care settings. Interventions at the policy level as well as the interpersonal and individual level are urgently needed to address epidemic levels of IPV in this marginalized, high-risk population."

Dynamics, Parentage Concerns

- Closely mirror those of other intimate partners, but abusers have additional tools that include weaponizing transphobia
- FORGE: https://forge-forward.org/wp-content/uploads/2020/08/power-control-tactics-categories_FINAL.pdf

- LGBTQ people are much more likely to have concerns regarding child custody and the legal rights to their children and might be very concerned about losing visitation or access to their children if they don't have a legal basis for parentage
- Access to child or children may be a key aspect of the power and control dynamic with an abuser
- LGBTQ people may also have multiple partners and complex family structures, where one of the partners may be abusive and exerting power and control over finances, etc., and more than one partner is seeking services simultaneously
- With multiple partners and children, there may be an even more complex arrangement regarding custody and concerns about losing access to children

Institutional & Programmatic Barriers in DV Services

- Few DV programs in NY even have LGBTQ-specific projects--and if do, limited in scope
- Name of organization is still female victim-identified, so victims think program unavailable to them
- DV staff misbelieve that program will not/does not/cannot serve TGNCNB or anyone male-identified in shelter
- DV program misadvised by funders that they are not entitled to reimbursement services to male-identified victims
- Denied access to support groups or other supportive services because of gender/gender expression or sexual orientation, relegated to one-on-one assistance
- Access given only to services off-site because of sexual orientation, gender or gender expression
- Endure harassment, bullying, or discrimination by staff or other DV program clients
- Staff lack cultural competency and education about TGNCNB people/rights for effective counseling, advocacy, or referrals
- Outreach materials/website depict or targeted only to cisgender or straight female-identified victims
- No or limited direct outreach or education to LGBTQ community

Current Climate Contributes to Barriers

- Anti-LGBTQ, and specifically anti-trans, rhetoric and legislation increase fear and concern for victims
  - Actively foster and encourage victim invisibility and vulnerability
  - Makes services less available
- Allow abusers to leverage and exploit this to make victim believe they won't be either believed or served
- Couple with increased bias, hate violence, discrimination in housing and employment
- TGNCNB adults, youth, and their families are increasingly fleeing hostile states and relocate to safer and more welcoming states and communities

August 7, 2023

National Sign on Letter of Domestic Violence, Sexual Assault, and Trafficking Organizations and Programs in Support of Full and Equal Access to Services and Shelter for Transgender Survivors

We, the undersigned 189 sexual assault, domestic violence, and trafficking organizations, strongly oppose proposed legislation and laws that limit the rights of transgender individuals. With missions to end domestic violence and sexual assault, we condemn the rhetoric that any such laws will increase safety or exist to protect women. Anti-trans laws do not increase safety and such proposals are opposed by the movement to end gender-based violence.

Though we oppose all legislation that targets the transgender community, we specifically oppose anti-transgender legislation that seeks to bar transgender and nonbinary survivors from support services and shelter spaces. States across the country have introduced harmful legislation that seeks to erode non-discrimination protections and prohibit transgender and nonbinary survivors from accessing public spaces that align with their gender identity, including restrooms, locker rooms, prison facilities, and more. These proposals seek to prohibit transgender and nonbinary people from accessing domestic violence shelters and rape crisis centers, thereby eliminating their ability to seek safe shelter space to escape an abusive relationship or healing services to recover from an experience of sexual violence.

These types of legislation are in violation of federal non-discrimination provisions in the Violence Against Women Act and Family Violence Prevention and Services Act, two primary

National Sign On Letter from NNEDV-August 2023

https://nnedv.org/wp-content/uploads/2023/01/National-Sign-On-Letter-8.7.23.pdf

NY LGBTQ HHS Needs Assessment

https://nyslgbtq.org/wp-content/uploads/2023/03/TRX-Report-010823-FINAL-REV-2.pdf
at p. xii:

	Age group			
	13–34	35–49	50+	Total
Gender (p<0.000)				
Cisgender male or female, only (n=1,450)	44%	72%	85%	63%
Trans man or trans woman, only (n=214)	11%	8%	8%	9%
Any combination of other genderqueer, gender non-conforming, non-binary, other, or multiple gender identities (n=650)	45%	21%	7%	28%
Total (n=2,314)	100%	100%	100%	100%
Orientation (p<0.000)				
Straight, gay, or lesbian (n=1,097)	29%	48%	76%	47%
Bisexual, pansexual, queer, other, or multiple orientations (n=1,217)	71%	52%	24%	53%
Total (n=2,314)	100%	100%	100%	100%

NYS LGBTQ+ Health & Human Services Needs Assessment

- https://nyslgbtq.org/wp-content/uploads/2023/03/TRX-Report-010823-FINAL-REV-2.pdf
- At page 40 shows results for people seeking services:

Abuse in relationships or the family includes, for example, domestic violence, relationship abuse, or emotional or physical abuse in intimate relationships.

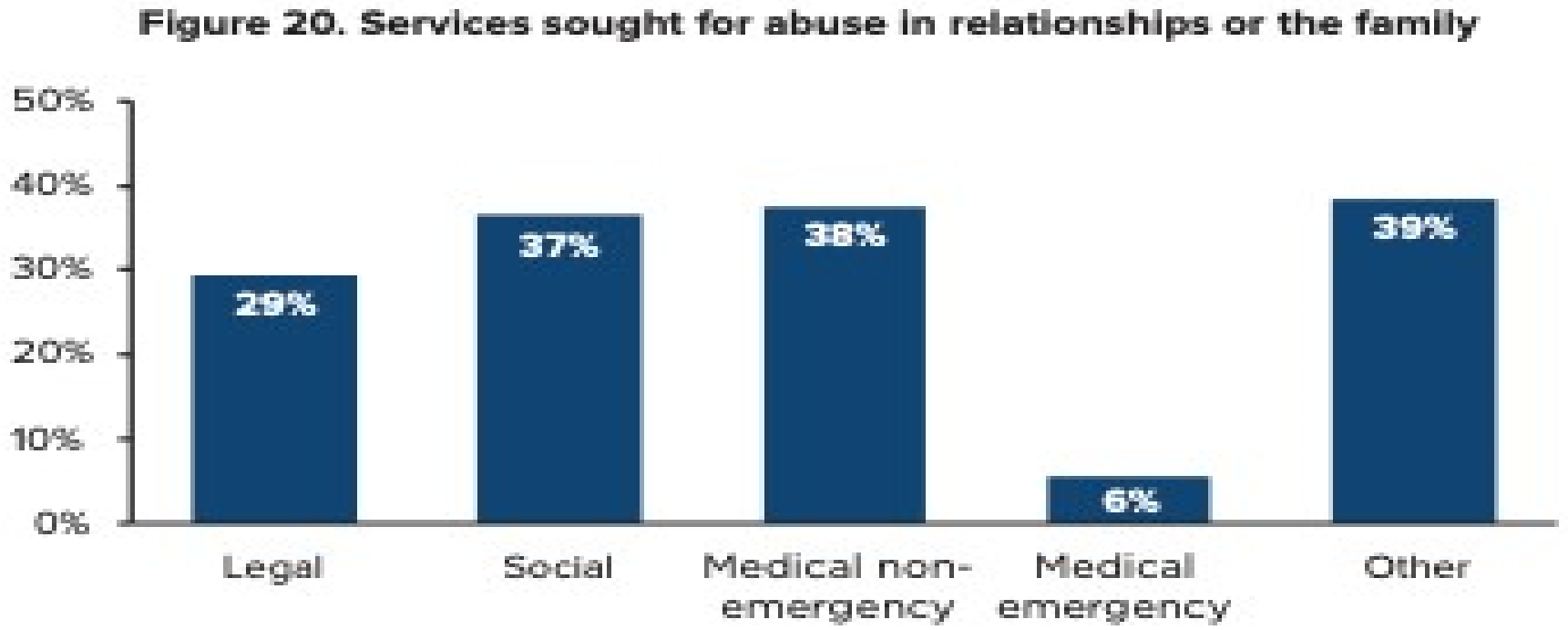
a. **Overall need: 9.3% of respondents reported an issue related to abuse in relationships or the family. Of those:**
   - 38.7% sought and received services
   - 14.2% sought but did not receive services
   - 47.2% did not seek services, even though they were affected by the issue

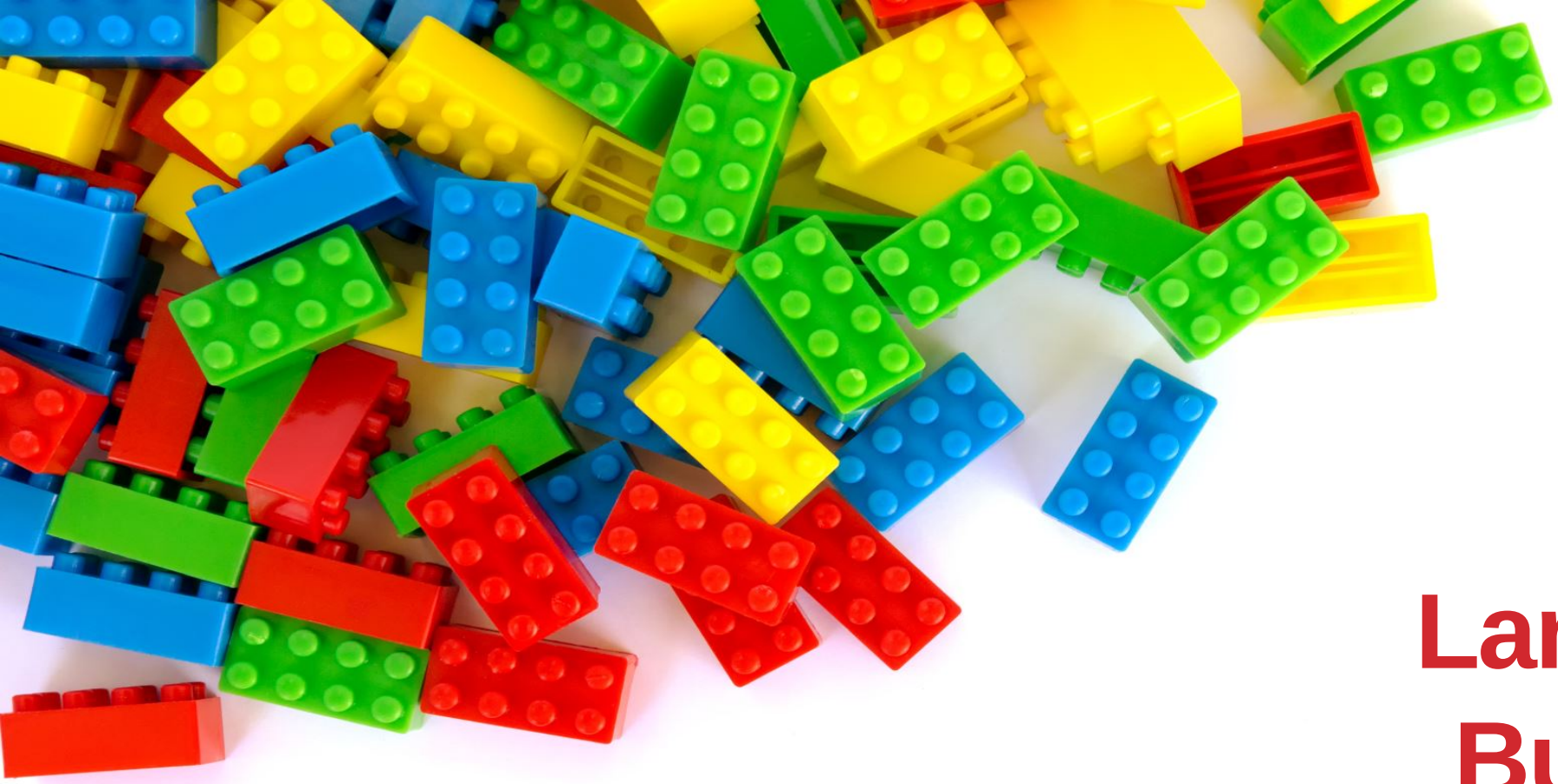
b. **Access: more respondents lacked access than received services.**
   - 61.4% of respondents who reported a need related to abuse did not receive services, including both those who sought services and those who expressed the need but did not seek services.

Respondents who experienced abuse in relationships or the family, sought a variety of services, shown in Figure 20, reflecting a mixture of legal, social, and medical services needed by those dealing with abuse. Of those who sought services, only 34% reported that their issue was resolved by the time of the survey, while 66% reported that their issue had not been resolved.

NYS LGBTQ+ Health & Human Services Needs Assessment

- https://nyslgbtq.org/wp-content/uploads/2023/03/TRX-Report-010823-FINAL-REV-2.pdf
- Also at page 40, shows types of services sought:





Language Building Blocks

Language Building Blocks

- **Sex (sex assigned at birth):** The physical sex characteristics that you're born with and develop including chromosomes, genitalia, body shape, etc. (male, female or intersex)
- **Gender Identity:** A person's deeply held internal sense of gender (i.e. being a man, woman, or an identity outside of the gender binary)
- **Gender Expression**: The ways in which a person outwardly presents gender through actions, clothing, hairstyles, mannerisms, social interactions, etc.
- **Sexual Orientation:** To whom one is attracted
  - Transgender is not a sexual orientation and transgender people can have any sexual orientation

Transgender:

- "Trans-": Latin prefix meaning across or "on the other side"

*Someone who knows that their **gender identity** is significantly different from their **sex assigned at birth***

Cisgender:

- "Cis-": Latin prefix meaning: near, or "on this side of"

*Someone who knows that their **gender identity** substantially aligns with their **sex assigned at birth –** someone who is **not** transgender*

Empire Justice Center

More Language Building Blocks

- **Gender Dysphoria:** a distressed state arising from the conflict between a person's gender identity and their sex assigned at birth.

- Wikipedia defines the **Gender Binary** as “the classification of sex and gender into two distinct, opposite and disconnected forms of masculine and feminine.”

Nonbinary / Genderqueer:

- Someone whose gender identity does not conform to a binary gender.
- May use gender neutral pronouns (or may not)
- May wish to have a gender-neutral gender marker(“X”) (or not) on identifying documents (as available)
- May use other terms: gender fluid, gender, gender non-conforming, expansive, etc.
- May or may not pursue some level of gender transition (based on gender dysphoria)

Non-Binary Identities

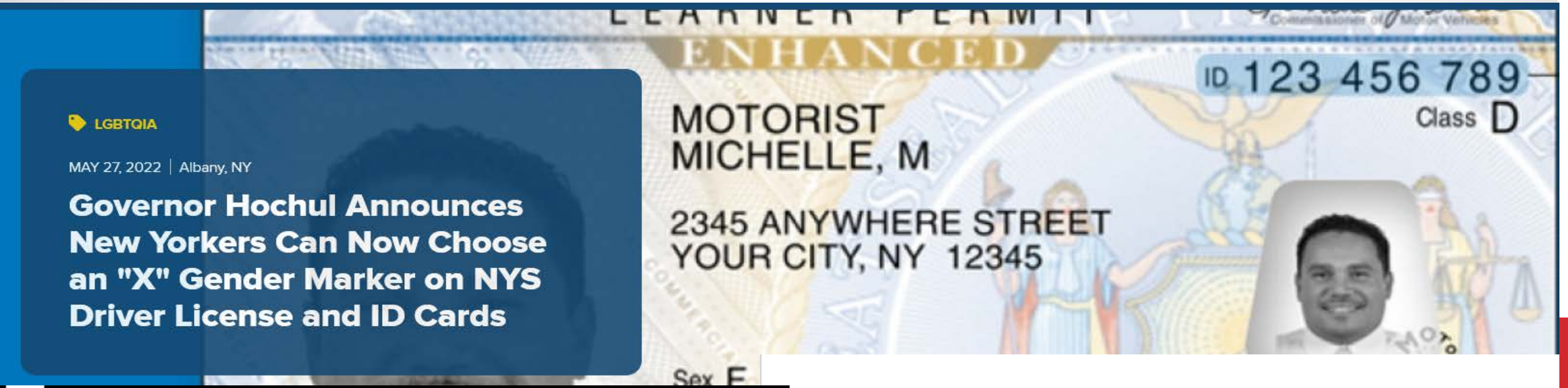
- **Non-binary identities are the fastest growing category of LGBTQ identification in New York, per the LGBTQ HHS survey, and especially among LGBTQ youth**
- Gender marker X can be on NY driver's license and NY birth certificate
- We should not be asking about genitals or surgery at intake
  - Become educated about different identities and have a plan for intake which is not discriminatory, and doesn't ask invasive questions about bodies, body parts, surgeries or family creation (i.e. don't ask: "how can you be a parent when you have XYZ identity", or asking who the "biological parent" is) when someone is seeking assistance and is in crisis

Abuser may be using transgender or nonbinary status as a tool of power and control, replicating this may be dangerous for the client

LGBTQIA

MAY 27, 2022 | Albany, NY

Governor Hochul Announces New Yorkers Can Now Choose an "X" Gender Marker on NYS Driver License and ID Cards



AP WORLD U.S. POLITICS SPORTS ENTERTAINMENT BUSINESS SCIENCE FACT CHECK ODDITIES HEALTH VIDEO CLIMA

Israel-Hamas war · UNLV shooting · Jonathan Majors trial · Taylor Swift: Time's Person of the Year

U.S. NEWS

New York to allow 'X' gender option for public assistance applicants

Updated 6:27 PM EST, October 4, 2023 Share

NEW YORK (AP) — New Yorkers will soon be able to choose an "X" gender option when applying for food stamps, Medicaid and other public assistance, under a court settlement Wednesday.

The agreement settles a 2021 lawsuit against multiple government agencies that claimed the state Office of Temporary and Disability Assistance's computer system compels nonbinary people to either lie under oath by declaring themselves as male or female or be denied benefits.

NEW YORK STATE DEPARTMENT OF HEALTH
Bureau of Vital Records

Application for Amendment of Certificate of Birth for Gender Designation for an Adult*
For persons born in New York State, outside of New York City

Required Information

Full Name: _____ Date of Birth: _____

Town/City/Village of Birth: _____

Mother/Parent's Name (as it appears on your birth certificate) _____

Father/Parent's Name (as it appears on your birth certificate) _____

Optional Information From Your Birth Certificate (include a copy if available)

District Number: _____ Register Number: _____ Birth Number: _____

Requested Amendments	As it appears on **current** birth certificate	As it should appear on **amended** birth certificate
Gender		
First Name		
Middle Name		

Empire Justice Center

Intersex: Definition and Resources

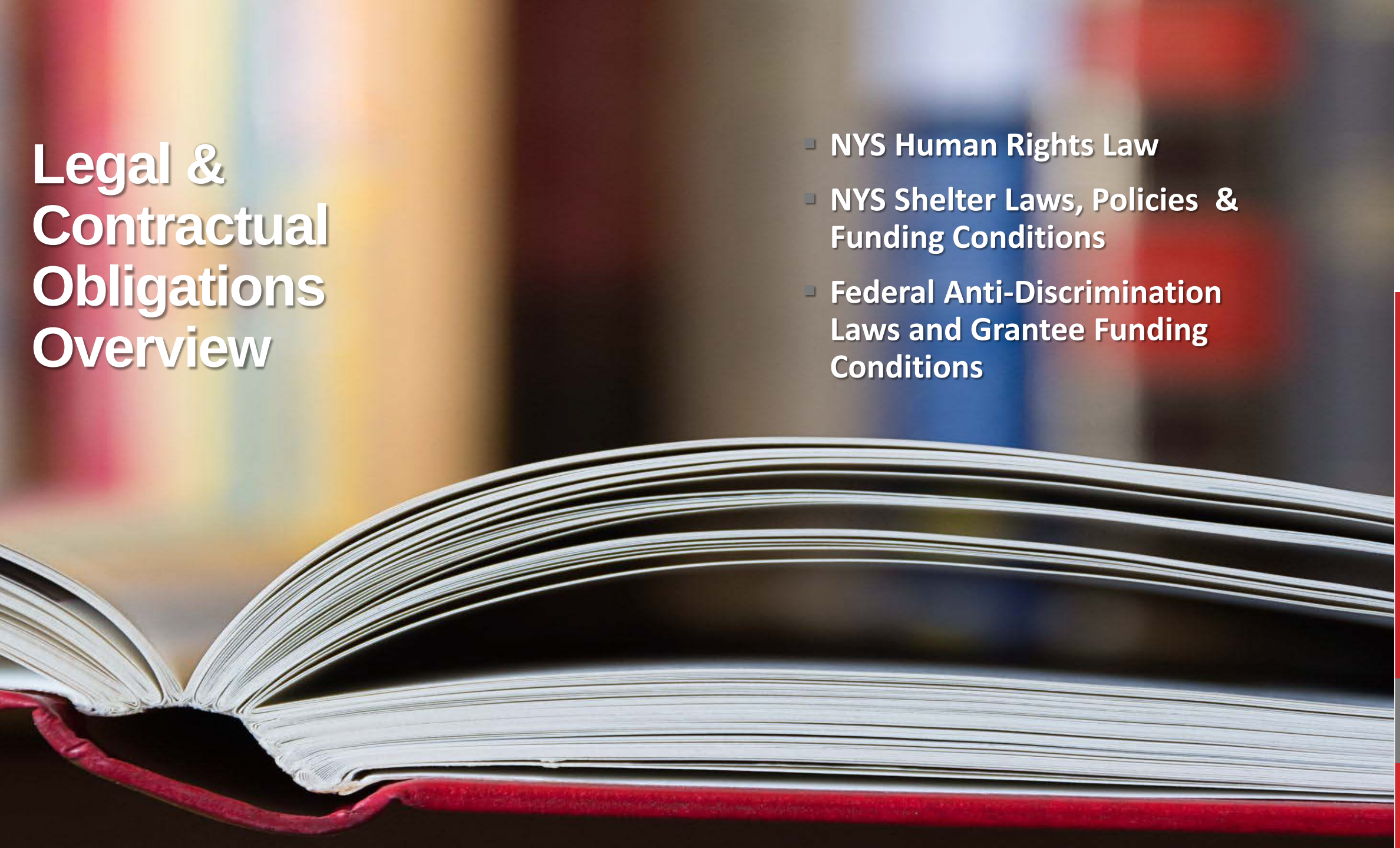
- InterACT's definition of Intersex: Intersex is an umbrella term for differences in sex traits or reproductive anatomy. People are born with these differences or develop them at a young age. Genitalia, hormones, internal anatomy, or chromosomes can develop in many ways.

- https://interactadvocates.org/

- ABA Presentation: Dotting the I's: What Lawyers Should Know About Intersex Variations, Bodily Autonomy, and Policies Impacting the Intersex Community:
  - https://www.youtube.com/watch?v=IQDQVE-H3Bc

Legal & Contractual Obligations Overview

- NYS Human Rights Law
- NYS Shelter Laws, Policies & Funding Conditions
- Federal Anti-Discrimination Laws and Grantee Funding Conditions



Empire Justice Center

Moving Towards More Inclusive Practices

- Increasing visibility of the problem
  - Increasing legislative assaults/hostility against TGNCNB people in sister states = more people fleeing to NYS (including victims)
- Funding conditions mandating more inclusion
- Changes in law and policy—**some are DECADES old!**
- Scholarly research on victimization against these communities
- Direct advocacy/pressure from groups who work at the intersection of this issue, as well as from impacted survivors and their families
- More DV programs implementing inclusive practices and serving as peer support to others
  - NYS LGBTQ DV Network:https://avp.org/resources/nys-lgbtq-ipv-network/
  - LGBTQ Endorsement Project through OPDV: https://opdv.ny.gov/lgbtqi-endorsement-program
- Discrimination lawsuits against DV organizations

Empire Justice Center

NYS Human Rights Law (HRL)

- Contained in the Executive Law
- Protects against discrimination and harassment based on **actual or perceived** race, national origin, religion, **sex**, **sexual orientation (SONDA), gender identity or expression (GENDA), disability** in areas of:
  - **Employment**
  - ***Housing:** (private or public)
  - **Education:** (excluding for-profit or parochial schools)
  - **Access to credit**
  - ***Public accommodations**
- DV programs may be both places or public accommodation and housing
- Providers of "housing accommodations" may legally assign *rooms* to individuals of one sex [Exec Law §296(5)(2)].

NYS DHR Regulation: 9 NYCRR §466.13

- On January 22, 2016, the Division of Human Rights (DHR) promulgated a new regulation that explicitly protects transgender and gender-nonconforming people by:
  - Interpreting **"sex"** to include **gender identity**, **gender expression**, and **transgender status**
  - **Harassment** based on **gender identity / expression** is deemed **sexual harassment (3-year lookback vs. 1 year)**
  - Interpreting **"disability"** to include **gender dysphoria**
    - Which provides for reasonable accommodations for the disability of gender dysphoria

Empire Justice Center

GENDA Guidance

- LGBTQ status, particularly transgender status, is private, and should not be shared with other staff or other participants in the program
  - Clear violation of NYS Human Rights Law to disclose: “A covered entity may not deliberately disclose a person’s transgender, gender non-conforming or intersex status, or their gender dysphoria without their consent.” at p. 10
- Helpful guidance authored by the NYS Division on Human Rights on Gender Identity Discrimination in NY: https://dhr.ny.gov/system/files/documents/2022/04/nysdhr-genda-guidance-2020.pdf
- NYS Division of Human Rights can be a place to enforce violations of the HRL: https://dhr.ny.gov/
- https://empirejustice.org/resources_post/knowyourrights/

NY's Domestic Violence Services System

- Services in every county in the state and generally contracted out by the local DSS

- Licensed/Approved by Office of Children & Family Services, paid for by OTDA
  - Patchwork state & fed funding, but primary funder is NYS
  - VAWA, FVPSA, and more
  - No longer need to apply for public benefits when seeking DV shelter, no need to agree to reimburse costs

- Non-Residential and Residential Program
  - Shelter
  - DV Program
  - Safe Dwelling
  - Safe Homes Networks

- Sources of Law: Social Services Law §459-a *et seq* and regulated at 18 NYCRR §§ 408.4, 452.2, 453.2, 454.2, 455.2, 462.2 (residential and non-residential)
  - Passed in 1987--implementing regulations and administrative policy directives promulgated for over 35 years thereafter

What Inclusive Services Does This Include?

Inclusion means actual, meaningful access to the residential and/or non-residential core services and other programming that DV programs are licensed, approved or otherwise grant funded to provide and includes:

- Non-residential programs
- Residential programs

- *Hotline Assistance*
- *Emergency Housing (and transitional housing if provided)*
- *Information & referral*
- *Advocacy*
- *Counseling & support groups*
- *Community education & outreach*
- *Children's services*
- Legal services
- Transportation
- Translation / interpretation services
- Other specialized services or funded programming

Empire Justice Center

Programmatic Eligibility for DV Services

- **18 NYCRR 408.4; 462.6** (Regs available on OCFS website, http://ocfs.ny.gov/main/dv/regulations.asp)

- *General requirements (RES):* Persons will be eligible for admission to a residential program for victims of domestic violence when:
  - such person is seeking temporary shelter; and
  - such person is a victim of domestic violence.

- *General requirements (NON-RES):* A person who is a victim of domestic violence, as defined in section 462.2(d) of this Part, is eligible for nonresidential services for victims of domestic violence whether or not the person is financially eligible for public assistance and care.

Who Can Access Residential Services?

"With the exception of those persons described in paragraph (2) of this subdivision and to the extent space is available, residential programs for victims of domestic violence must provide emergency services and temporary shelter to **any victim of domestic violence,** as defined in section 452.2(g) of this Part…. ."

- If male victim needs residential services they "***cannot be automatically excluded" unless it is determined that "the placement will not be conducive to the 'safety or well-being of the other residents'." 04 INF-12 Temporary Assistance Question and Answers (May 19, 2004)*** (emphasis added)
- *"Conducive to the safety or well-being of other residents"* language had previously been relied upon by most shelter to exclude people based on their sex, gender, and sexual orientation and retain exclusive "women only spaces" who made up the majority of victims seeking
- Also previously used to exclude victims' older male minor children

“Victim of Domestic Violence” Legal Definition

- **Any person over the age of sixteen, any married person or any parent accompanied by his or her minor child** or children in situations in which such person or such person's child is a victim of an act which **would constitute a violation of the penal law**, including, but not limited to acts constituting…; and

  (i) **such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm** to such person or such person's child; and

  (ii) **such act or acts are or are alleged to have been committed by a family or household member**.

SSL §459-a

Empire Justice Center

“Victim of Domestic Violence”

- **“Family or household members"** means:
  - (a) persons related by consanguinity or **affinity**;
  - (b) persons **legally married** to one another;
  - (c) persons **formerly married** to one another regardless of whether they still reside in the same household;
  - (d) persons who have a **child in common** regardless of whether such persons are married or have lived together at any time;
  - (e) unrelated persons who are continually or at regular intervals **living in the same household** or who have in the past continually or at regular intervals lived in the same household;
  - (f) persons who are not related by consanguinity or affinity and who are or have been in an **intimate relationship** regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an "intimate relationship“ include, but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; or (g) any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation.
    - ***Per 18 NYCRR §§408.2 & 462.2**, also includes* “unrelated persons who have had intimate or continuous social contact with one another and have access to one another’s household.”
- **09-OCFS-ADM-07 & marriage equality:** Includes LGBTQ people “legally married in [New York or] another country or state.”

SECTION II - TERM OF AGREEMENT AND RENEWAL

1. The term of this Agreement shall be from _____through_____ (maximum of 12 months) and may be renewed in writing from year-to-year thereafter. Renewal is not automatic and is dependent upon annual negotiations agreeable to each party, and completed prior to the end of the term of this Agreement.

2. The parties hereto are under no obligation to renew this Agreement or to purchase or provide any care, in whole or in part, after the expiration of the term set forth herein or any renewal thereof, except as herein provided. The Agency must give notice in writing of its intention not to renew the Agreement at least three months prior to the expiration of this Agreement.

3. If notice not to renew has not been given in accordance with the foregoing, then the parties shall move with all due speed to reach a new Agreement to become effective upon expiration of this current Agreement.

4. If negotiations for a new Agreement have not been completed upon expiration of this Agreement, the parties must enter into a written interim continuation Agreement covering the period until negotiations are completed and a new Agreement is executed or an appropriate notice of termination is issued, pursuant to Section X of this Agreement.

SECTION III - SCOPE OF SERVICES

1. It is mutually agreed between the Department and the Agency that the Agency shall provide residential services for victims of domestic violence in accordance with the laws and regulations of New York State, including, but not limited to, 18 NYCRR Parts 408, 452, 453, 454 and 455, as well as those standards prescribed by the New York State Office of Children and Family Services. Residential services for victims of domestic violence must be available services to all victims of domestic violence regardless of race, creed (religion), color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, or disability, predisposing genetic characteristic, familial status, or marital status.

2. In accordance with the provisions in 18 NYCRR Part 408.4(b), when a victim goes directly to the Agency, the Agency shall be responsible for determining the victim's eligibility for services. When a victim goes directly to the Department, the Department will be responsible for determining a victim's eligibility or for referring the victim to a residential program for an eligibility determination.

3. When the Agency determines that a victim is eligible for admission and admits such victim into the program, the Agency must provide notice of such admission to the Department if the victim resided within the Department's jurisdiction at the time of the domestic violence incident,

6

Revised Model Contract for Domestic Violence Services

Anti-Discrimination Clause

https://ocfs.ny.gov/main/policies/external/ocfs_2019/ADM/19-OCFS-ADM-16.pdf

Administrative Guidance: 15-OCFS-ADM-23

- **Issued and effective on October 16, 2015**: Titled "Non-discrimination on the Basis of Sex, Sexual Orientation, and Gender Identity or Expression in Residential and Non-residential Domestic Violence Programs"
- **Purpose of the ADM**:
  - Reaffirms and explicitly clarifies the OCFS requirement that residential and non-residential programs for victims of DV "provide shelter and appropriate services for all victims of domestic violence, regardless of … sexual orientation, gender identity or expression,… sex, marital status, or disability."
    - Make clear must provide services to males and lesbian, gay, bisexual, transgender, intersex and questioning persons
  - **Also provides guidance to DV programs in fulfilling federal requirements if receiving funds through the federal FVPSA and VAWA**
  - **Applicable to EVERY licensed and approved DV program in NY, *even if* they are not receiving FVPSA or VAWA funding**

Now Back to 15-OCFS-ADM-23

Enumerated a list of 7 required actions for each program to be in place by January 15, 2016 with written policies that were to be reviewed and approved by OCFS:

1. Affirming it accepts program participants regardless of their protected status
2. Prohibits harassment of participants based upon their protected status
3. Written explanation of why, if they so conclude, service delivery should be or remain sex-segregated or sex-specific
4. Procedures for monitoring and responding to claims of harassment or bullying
5. Plans for staff training to respond to harassment or bullying
6. Review (and revise) outreach and educational materials, incl. websites
7. Provide shelter residents with updated notice of rights and grievance procedures

15-OCFS-ADM-23

- "A residential program for victims of domestic **violence may not categorically determine** that a person is likely to cause danger to themselves or to others or to substantially interfere with the health, safety, welfare or care of other residents **solely because of that person's sex, sexual orientation, or gender identity or expression.** Similarly, programs **cannot summarily determine that they are unable to appropriately meet a victim's needs solely because of that person's sex, sexual orientation, and/or gender identity or expression."**

(emphasis added)

Empire Justice Center

Family Violence Prevention and Services [FVPSA] Grantees

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

LGBTQ ACCESSIBILITY POLICY

As of 2013, organizations receiving FVPSA funding had to sign an application containing the following agreement:

The needs of lesbian, gay, bisexual, transgender, and questioning people are taken into consideration in applicant's programming. Applicant has considered how its programming will be inclusive of and non-stigmatizing toward such individuals. **If not already in place, awardee must establish and publicize policies prohibiting harassment based on** race, **sexual orientation, gender, gender identity (or expression),** religion, and national origin. The submission of an application for this funding opportunity constitutes an assurance that **applicant has or will put such policies in place within 12 months of the award**. Awardees should ensure that **all staff members are trained to prevent and respond to harassment or bullying in all forms** during the award period. Within 12 months of the award awardee must be prepared to monitor claims, address them seriously, and document their corrective action(s) so all programming beneficiaries are assured that the applicant organization and **its programming is safe, *inclusive,* and non-stigmatizing by design and in operation**.

See also: https://nnedv.org/wp-content/uploads/2020/03/FVPSA-Final-Rule-FAQs-2016.pdf

(4) As with all individuals served, transgender and gender nonconforming individuals must have equal access to FVPSA-funded shelter and nonresidential programs. Programmatic accessibility for transgender and gender nonconforming survivors and minor children must be afforded to meet individual needs consistent with the individual's gender identity. ACF requires that a FVPSA grantee or subgrantee that makes decisions about eligibility for or placement into single-sex emergency shelters or other facilities offer every individual an assignment consistent with their gender identity. For the purpose of assigning a service beneficiary to sex-segregated or sex-specific services, the grantee/subgrantee may ask a beneficiary which group or services the beneficiary wishes to join. The grantee/subgrantee may not, however, ask questions about the beneficiary's anatomy or medical history or make demands for identity documents or other documentation of gender. A victim's/beneficiary's or potential victim's/beneficiary's request for an alternative or additional accommodation for purposes of personal health, privacy, or safety must be given serious consideration in making the placement. For instance, if the potential victim/beneficiary requests to be placed based on his or her sex assigned at birth, ACF requires that the provider will place the individual in accordance with that request, consistent with health, safety, and privacy concerns of the individual. ACF also requires that a provider will not make an assignment or re-assignment of the transgender or gender nonconforming individual based on complaints of another person when the sole stated basis of the complaint is a victim/client or potential victim/client's non-conformance with gender stereotypes or sex, including gender identity.

45 CFR § 1370.5 –
What additional non-discrimination requirements apply to these programs?

Administration for Children's Services FVPSA regulations: Subpart A-General Provisions

VAWA 2013

- The Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4 (VAWA 2013), enacted on 3/7/13, eff. 10/1/13

- In this iteration, numerous amendments sought to increase protections and access to services for LGBTQ people:
  - "Intimate partner" to eligible relationships in "domestic violence" definition
  - **Civil rights provision applicable to all OVW grantees prohibiting discrimination on the basis of *actual or perceived* sexual orientation, sex, and gender identity—as well as other protected grounds**
  - Definition of "underserved" included sexual orientation and gender identity
  - Created a new STOP funding purpose area for LGBTQ victims

Which Grant Recipients Are Covered?

- All awards made under covered grants on or after October 1, 2013

- All grant programs administered by the Office on Violence Against Women (OVW)
  - https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/vawanondiscrimination provision.pdf

- *Regardless of effective date* for nondiscrimination conditions at the time DOJ stated: "**all OVW grantees are subject to a contractual award condition** prohibiting activities that may compromise victim safety, which would include excluding a victim from services or benefits based on one of the protected categories in the VAWA nondiscrimination grant condition."

DOJ Guidance for VAWA 2013

- FAQs for the STOP Formula Grant (updated 2017): https://www.justice.gov/media/920141/dl?inline

- FAQ's for the Non-Discrimination Grant Condition (released April 9, 2014): https://www.justice.gov/media/1111571/dl?inline

- And 2022 DOJ blog on their most recent VAWA LGBTQ-related initiatives following passage of VAWA 2022: https://www.justice.gov/ovw/blog/ovw-honors-lgbtqi-advocates-and-survivors

VAWA 2013's Anti-Discrimination Provision

- Protects LGBTQ victims from discrimination by prohibiting VAWA grantees from denying these communities access to services on the basis of their sexual orientation or gender identity

"No person in the United States shall, on the basis of actual or perceived race, color, religion, national origin, **sex, gender identity (as defined in paragraph 249(c)(4) of title 18, United States Code), sexual orientation**, or **disability**, **be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part** with funds made available under [VAWA], and any other program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women."

VAWA 2013's Anti-Discrimination Provision

- "If **sex segregation** or **sex-specific** programming is necessary to the **essential operation of a program**, nothing in this paragraph shall prevent any such program or activity from consideration of an individual's sex."
- "In such circumstances, grantees **may meet** the requirements of this paragraph by providing **comparable services** to individuals who cannot be provided with the sex-segregated or sex-specific programming." *(emphasis added)*
  - *SO—not off the hook, sex-designated may instead provide comparable services!*

VAWA 2013's Anti-Discrimination Provision

Per VAWA Guidance: "A recipient **should not assume** that, because services have been sex-segregated or sex-specific in the past, continued sex segregation or sex specificity is 'necessary' to its programming."

- Onus is *on the grantee* to make a fact-based, clear articulation of why sex-designated programming is necessary to its essential operations, based upon:
  - The relative facts and circumstances;
  - Best practices and research findings, as applicable; and
  - "…[J]ustification cannot rely on **unsupported assumptions** or **overly broad sex-based generalizations**" or reasons that are "trivial or based solely on the recipient's convenience."

Explain Why "Sex-Segregated" or "Sex-Specific" Programming is Essential To Their Operations

- **Sex-segregated:** Male- and female-identified persons receive services from the program in separate settings based upon their gender identity. Requires person to choose.
  - *Example: DV shelters have historically been sex-segregated as women-only spaces*
- **Sex-specific:** The program designed differently for male- and female-identified persons.
  - *Example: College campus educational programs addressing rape may offer different violence prevention skills to males and to females.*

- Written fact-based, clear articulation of why sex-designated programming is *necessary to essential operations*.
  - Per VAWA: "…[J]ustification cannot rely on **unsupported assumptions** or **overly broad sex-based generalizations**" or reasons that are "trivial or based solely on the recipient's convenience."

What is “necessary to the essential operation of a program”?

- Per the ADM (and VAWA) guidance, all factors that must be considered in the evaluation of whether sex-segregated or sex-specific programming is necessary include:
  - the nature of the service;
  - the anticipated positive and negative consequences to all eligible victims/beneficiaries of not providing the program in a sex-segregated or sex-specific manner;
  - the literature on the efficacy of the service being sex-segregated or sex-specific;
  - the impact on transgender individuals seeking services; and
  - whether similarly situated programs/grant recipients providing the same services have been successful in providing services effectively in a manner that is not sex-segregated or sex-specific

Considerations for Residential Services

- If DV program is considering whether to continue segregating its housing by sex, it would likely assess:
  - Type and layout of property where housing provided
  - May be significant consideration if residents must share bedrooms & bathrooms (may support having separate bathroom/bedroom facilities OR housing in separate physical locations)
- If requires a selection of gender to access, must be the gender identity that the individual identifies with
  - Best practice: **Victims should be asked what services they wish to join** & DV program "may not…ask questions about that person's "anatomy, medical history, or make burdensome demands for identity documents."
- **If your services are gender-binaried, how are you planning to serve non-binary people?**

Considerations for Residential Services

- **Per VAWA**:
  - In determining housing, may consider on a “case-by-case basis” whether such housing assignment would ensure victim’s health and safety
  - “Serious consideration” to victim’s own views with respect to their personal safety
  - Services should not “isolate or segregate” victims based upon their actual or perceived gender identity
  - May not make a determination about services based upon complaints of other victims receiving grantee’s services, when such complaints are based solely on gender identity

Sex–Designated Programs and Comparable Services

- **Per ADM:** Unless the residential program has determined that sex-designated is essential to its operations, it **"may not refer a victim or a victim's family member to another program, program location, or shelter because of the sex, sexual orientation, or gender identity or expression of the victim or any member of the victim's family."** *(emphasis in ADM)*
- **And incorporates VAWA by reference: May meet the requirement** by providing **"comparable services"**
- SO—
  - **Referrals not preferred**, but may be tolerated under limited circumstances
  - Expectation is that many programs will be opening their doors, rather than referring

What are “comparable services”?

- If comparable services are provided, must make every reasonable effort to provide shelter that is **“designed to confer substantially equal benefits”** in terms of safety, quality, and amenities:
  - Secure & furnished sleeping area
  - Bathroom
  - Kitchen facilities/access to food
  - Case management, social services, supportive services (group & one-on-one counseling),
  - Arrange for transportation to primary building where services offered if housed off-site

What are “comparable services”?

Under VAWA, a **comparable service is “designed to confer a substantially equal benefit” and is of the same or similar quality and duration—need not be identical.**

- Factors VAWA (and OCFS by reference) will consider individually, or in the aggregate, for comparability include:
  - Nature and quality of the services provided;
  - Relative benefits of different therapeutic modalities or interventions;
  - Geographic location or other aspects of accessibility;
  - Characteristics of the facilities where services are provided; and
  - Characteristics of the individuals who provide the service

Given the documented concerns about discrimination, harassment, and violence in homeless shelters, is that comparable and safe?

Is a motel housing other homeless people safe?

2020 Policy Guidance to Homeless Shelters for serving TGNCNB folks: https://otda.ny.gov/policy/directives/2020/ADM/20-ADM-03.pdf

Notice of Rights & Grievance Procedures

- Anti-discrimination and harassment language must be on the resident's notice of rights form given within one (1) day of their admission
- Advise residents of right to present grievances on their own, or another resident's behalf, and without fear of reprisal to one or more of the following :
  - Program, Program's designee
  - Local social services district (DV program's contracting agency), and/or
  - OCFS
- Outline due process procedures for presenting grievances
- Establish a set of procedures for responding to harassment and bullying—in all forms.
- Plans for staff training on responding to harassment and bullying

Education & Outreach Materials

- What do the public facing materials reflect?
  - Brochures, palm cards, and more
  - Training curricula (inside and outside the organization) and for all new projects
  - Website, blogs, social media
  - Collaborations or LGBTQ groups they may work with

Enforcement and Construction of the VAWA Anti-Discrimination Provision

- "The authority of the Attorney General and the Office of Justice Programs to enforce this paragraph shall be the same as it is under section 3789d of title 42, United States Code."

- "Nothing contained in this paragraph shall be construed, interpreted, or applied to supplant, displace, preempt, or otherwise diminish the responsibilities and liabilities under other State or Federal civil rights law, whether statutory or common."

- Complaint process and procedures are detailed in the DOJ Guidance.

Complaints of Mistreatment May Go To…

- DV Shelter staff, Director of DV program or head of their umbrella organization
- Board of Directors of the DV Program
- Funders—local DSS/OCFS, VAWA, FVPSA, others
- Licensing Agency—OCFS
- NYS Division of Human Rights
  - Other local office of civil rights
- Federal Office of Civil Rights
- Civil Lawsuit

Other Potential Sources of DV Shelter Funding May Have Anti-Discrimination Mandates and Conditions

The DV program may receive a patchwork of funds and each of those sources of funding may have non-discrimination-related conditions on that funding and related complaint mechanisms.

Such as:

- Federal Emergency Management (FEMA)
- Federal Office of Housing and Urban Development (HUD)
  - https://files.hudexchange.info/resources/documents/Equal-Access-for-Transgender-People-Supporting-Inclusive-Housing-and-Shelters.pdf
  - https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq
- Victim of Crime Act (VOCA)
  - https://forge-forward.org/forge-creates-transgender-nonbinary-victims-of-crime-toolkit/
- Foundations

NYC Code: (L.L. 2021/130, 11/21/2021, eff. 5/20/2022)

§ 21-147 Domestic violence emergency shelter services for lesbian, gay, bisexual, transgender, queer, questioning, intersex, gender non-conforming and non-binary residents.

- a. *Definitions.* For the purposes of this section, the following terms have the following meanings:

Domestic violence emergency shelter. The term "domestic violence emergency shelter" has the same meaning as provided in section 21-141.

LGBTQI+. The term "LGBTQI+" means lesbian, gay, bisexual, transgender, queer, questioning, intersex, gender non-conforming or non-binary.

- b. No later than August 1, 2023 and annually by August 1 thereafter, the department shall complete a review of the services and resources provided to LGBTQI+ individuals entering domestic violence emergency shelters including, but not limited to, efforts aimed at data collection about LGBTQI+ individuals utilizing domestic violence emergency shelter, and shall submit to the mayor and the speaker of the council, and post on its website, a written report including the following information:

NYC Code (2022)

1. The total number of survey forms distributed by the department pursuant to paragraph 4 of subdivision k of section 15 of chapter 1 of the charter; section 15 of chapter 1 of the charter;

2. The total number of individuals who self-identified as LGBTQI+ on the survey forms distributed pursuant to paragraph 4 of subdivision k of section 15 of chapter 1 of the charter;

3. A description of the department's efforts to collect data specifically about LGBTQI+ individuals utilizing domestic violence emergency shelters;

4. A description of what the department has determined are the specific service needs of domestic violence emergency shelter residents who identify as LGBTQI+;

5. A description of the types of services and resources provided at domestic violence emergency shelters specific to residents who identify as LGBTQI+;

6. A description of the department's outreach efforts to reach LGBTQI+ individuals who may be eligible for domestic violence emergency shelter services;

7. To the extent practicable, the total number of complaints the department received regarding domestic violence emergency shelter services provided to residents who identify as LGBTQI+, disaggregated by complaint type;

8. Recommendations for enhancing outreach efforts and services offered by the department specifically for domestic violence emergency shelter residents who identify as LGBTQI+; and

9. The total number of unduplicated department and contracted provider staff who have completed the training regarding LGBTQI+ individuals to be provided pursuant to subdivision c of this section during the preceding fiscal year.

c. Beginning no later than six months after the effective date of this local law, and at least once every two years thereafter, the department shall, in consultation with a community-based organization with culturally specific expertise in challenges faced by LGBTQI+ individuals who have experienced domestic violence, provide training to all appropriate employees identified by the department who work directly with clients at domestic violence emergency shelters.

Questions?

Evaluation

Empire Justice Center

Telesca Center for Justice

One West Main Street, Suite 200

Rochester, NY 14614

www.empirejustice.org