EMPIRE JUSTICE CENTER

KNOW YOUR RIGHTS

OPENING SHELTER DOORS

A guide to shelter access for Transgender, Gender Non-Confirming, and nonbinary (TGNCNB) people

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Teach. Practice. Change. | Making the law work for all New Yorkers

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ABOUT EMPIRE JUSTICE CENTER

Empire Justice is a statewide, nonprofit law firm and advocacy organization with five offices across the State, outside of New York City. Our mission is to make the law work for all New Yorkers, especially for those who need its protection the most. We **teach** the law by providing training and technical assistance to other attorneys and nonprofit advocates so that they can better serve their clients. We **practice** the law by engaging in impact litigation and by providing direct representation to low-income New Yorkers. We **change** the law by engaging in legislative and administrative advocacy regarding issues that impact low-income New York families.

ABOUT EMPIRE JUSTICE'S LGBTQ AND DOMESTIC VIOLENCE WORK

Empire Justice is grant-funded to work at the intersection of intimate partner violence and the legal rights of LGBTQ communities. We provide training and technical assistance on these topics. If you think you have been discriminated against, this Guide should give you a basic understanding of your rights and remedies. You may also contact a lawyer who is familiar with discrimination matters, including our LGBTQ Rights project.

For more information contact LGBTQ@empirejustice.org or (518) 935-2857.

IMPORTANT NOTE: No attorney-client relationship is formed by communications received through this Guide or this website. Any information available in this Guide or on this website is for general legal education purposes only and is not legal advice. If you think you have been discriminated against, you should contact a lawyer who is familiar with legal protections for transgender, gender non-conforming, and nonbinary people. Some legal resources are listed at the end of this guide for your convenience.

This law is current as of December 2023. Laws may change and subsequent changes in the law may not be reflected in this Guide.

WHY THIS GUIDE?

Anyone, regardless of gender, may experience control, threats, abuse, or violence from a current or former intimate partner. Studies indicate that transgender, gender non-conforming, and nonbinary (TGNCNB) people experience this type of abuse at similar or even higher rates, especially TGNC People of Color. However, many people assume falsely intimate partner violence (IPV) only happens to cisgender women. Sadly, the anti-violence movement of the last 50 years has often ignored or erased the experiences of LGBTQ+ victims which has encouraged this flawed narrative to persist.

As a result of this, some TGNCNB victims may have a negative or hurtful history of interactions with service providers. For example, they may have been told they were unwelcome in shelter and support groups, not believed, treated with suspicion, disrespected, or experienced outing. There are very few LGBTQ-centered domestic violence services around New York state, including in urban areas. Other traditional interventions (such as orders of protection, family law and divorce) were largely unavailable to LGBTQ+ victims until the last decade after changes in the legal landscape. New York's Gender Expression Non-Discrimination Act, prohibiting discrimination based on a person's gender identity and expression, did not get signed into law until 2019. On top of these barriers, many TGNCNB people have also faced disproportionate levels of bias, harassment, bullying, and discrimination across their lifespan. As a result of these significant and systemic barriers, TGNCNB victims may have been forced to endure more prolonged and intense abuse because they believed that there were no competent services available locally.

This Guide is intended to help TGNCNB New Yorkers better understand what IPV may look like and what program resources are available for help. It also explores what your rights are if you are discriminated against or denied access to these services because of your gender identity or gender expression.

WHAT IS INTIMATE PARTNER ABUSE AND VIOLENCE?

IPV includes a wide range of behaviors one current or former intimate partner uses to obtain or maintain power and control over the other. Tactics that cause harm can include coercion, threats, anger, jealousy, surveillance, financial abuse, sexual violence, emotional abuse, physical violence, and more. In some cases, the abusive person may threaten to harm themselves or third parties, like your children, friends, or co-workers. This type of abuse may be occasional or frequent and will vary in the level of severity.

If you are TGNCNB, the person who causes you harm may use your gender identity or expression as a tool of abuse in a variety of ways by: threatening to out you, deadnaming you or intentionally using the wrong pronouns, placing you in unsafe situations, relocating you to a place hostile to trans rights, ridiculing or undermining your identity or your body, saying you are unworthy of love, isolating you from supportive people and services, denying or undermining your access to medical and gender affirming care, destroying your clothes or other items that align with your gender, controlling the money and finances, undermining your job or education, threatening your access to stable housing, violating boundaries around your body/sexuality/reproductive decisions, sending you harassing texts or communications, sharing intimate images of you without your permission, threatening your access to your children, threatening to call the police or child welfare authorities on you, threats to harm pets or service/support animals, and much more.

Learn more about power and control tactics of abuse with these links:

- Forge Forward's trans-specific power and control tactics
- https://www.tnlr.org/en/what-is-partner-abuse/

While this Guide's focus is on abuse committed by *intimate partners*, TGNCNB people are often a target of abuse by other members of their family or household, such as parents, siblings, or relatives. In many cases, you can access a lot of the same interventions.

CAN I ACCESS A DOMESTIC VIOLENCE PROVIDER IF I NEED HELP?

Every county in New York has at least one state-licensed domestic violence victim services provider organization that offers shelter services, counseling, and much more. By law, help must be provided without regard to a person's sex, gender identity and gender expression, or sexual orientation. *That means you must never be denied assistance or treated in a discriminatory way because you identify as male, female, transgender, non-binary, or gender non-conforming.*

Anyone is eligible to receive domestic violence services if they are a "victim of domestic violence." "Victim" includes any person over the age of 16, any married person, or any parent accompanied by their minor child(ren) where that person or child is the victim of any act that is a violation of the penal law and the acts resulted in actual or substantial risk of physical or emotional injury or harm. These acts must have been committed by a "family or household member," such as a current or former spouse, dating partner, family member related by blood or marriage, or a person with whom you share a child.

If someone has significant medical care or mental health needs that the domestic violence services program cannot provide itself or with the assistance of other community resources, that may be a reason a program can decline to provide shelter services. Further, because of congregate living, a shelter may refuse to accept someone with a communicable disease that could be transmitted to other residents (such as infectious measles), or someone who refuses to sign an agreement accepting the program's rules, or who is likely to cause danger to themselves or others or will substantially interfere with the health, safety, welfare, or care of other residents. *A program cannot claim that someone poses a threat or danger to other residents simply because of their gender identity, gender expression, or sexual orientation.* To find a list of programs in your area, visit the New York State Coalition Against Domestic Violence Program Directory.

Help is available 24/7 by phone, text, or chat through the NYS Domestic Violence Hotline . The National Domestic Violence Hotline may also be helpful. Consider calling 911 if you are in immediate danger.

The national TransLifeline Hotline, while not IPV-specific, offers peer support for people in crisis or if they just need to talk.

WHAT SERVICES DO DOMESTIC VIOLENCE PROGRAMS PROVIDE?

A local domestic violence program's goal is to help all victims access information, safety, and stability. They offer a variety of residential and non-residential services that include: temporary shelter, safety planning, 24-hour hotline, counseling, support groups, general advocacy, court advocacy and accompaniment, information and referrals, transportation, children's services, help finding housing or public assistance benefits, and case management. Some programs also have in-house civil legal services or transitional housing. *Domestic violence programs provide their services at no cost to victims and there is no financial eligibility to qualify. Services are confidential.*

While most victims will never need temporary shelter, that service is still in high demand. Unfortunately, your local domestic violence shelter may be full when you need help the most. If they say they have some bed space, but it is only available for a victim with a different gender than yours, you can ask "can you consider moving existing residents around so you can help me

too?" If there is no available shelter, the program must work still work with you to make a safety plan and help secure you an alternative emergency safe place to stay. Alternatives may include a domestic violence shelter in a different county, a local hotel, or emergency housing such as a homeless shelter. Like domestic violence programs, homelessness services also cannot discriminate against you based on your TGNCNB identity. Even if you are placed in alternate emergency housing, your local domestic violence program must still provide you with counseling, support group, advocacy, and other non-residential support services.

ARE THERE LOCAL, STATE, OR FEDERAL LAWS THAT PROHIBIT DISCRIMINATION OF TGNC VICTIMS BY DOMESTIC VIOLENCE SERVICES PROVIDERS?

DOMESTIC VIOLENCE SPECIFIC

Under New York's long-standing Social Services Law, there have never been any exclusions to program access based on gender or sexual orientation. In fact, in 2015 domestic violence programs were specifically reminded about their legal obligations to serve LGBTQ+ people and mandated to create written internal policies around inclusion and non-discrimination, as well as incident and complaint processes, outreach, and staff training.

There are also funding conditions from state and federal (Violence Against Women Act and Family Violence Prevention and Services Act) agencies that require domestic violence programs receiving those grants to comply with anti-discrimination mandates.

ANTI-DISCRIMINATION GENERALLY

New York's Gender Expression and Non-Discrimination Act (GENDA), contained in our Human Rights Law, explicitly prohibits discrimination based on someone's actual or perceived sex, gender identity and gender expression in housing, public accommodations, and more. For some TGNCNB people, there may also be additional disability-related protections in housing and public accommodations. The same Human Rights Law protections exist for actual or perceived sexual orientation under the state's Sexual Orientation Non-Discrimination Act (SONDA).

In some communities around the state, including NYC, there are also local anti-discrimination laws that provide protections around gender identity and gender expression.

WITH ALL OF THESE REQUIREMENTS, WILL DOMESTIC VIOLENCE PROGRAMS BE WELCOMING AND INCLUSIVE IF I REACH OUT FOR HELP?

As a crisis services organization, domestic violence programs are expected to take very seriously their obligation to welcome and serve diverse communities appropriately. They are aware that, for many victims in danger, there is simply nowhere else to turn. Some domestic violence programs have successfully ensured that TGNCNB victims are given the respect and support they deserve. Unfortunately, not all programs have evolved equally, resulting in some TGNCNB victims finding service providers unprepared and in need of further training and culture change.

If the hotline or intake process is not affirming or inclusive right from the start, that may be an indicator that the program, while well-meaning, is not well-equipped yet to serve you.

Remember, it is not your job to educate staff about the transgender or non-binary experience. However, you might suggest that they begin by reaching out for education and best practices with some of the following sites:

- New York State LGBTQ Intimate Partner Violence (IPV) Network
- FORGE Forward
- National LGBTQ Institution of Intimate Partner Violence Toolkit for Increasing Shelter Access
- LGBTQI+ Endorsement Program

If you are treated in a hostile, biased, or discriminatory manner you have rights. When you are talking to any provider, it is always a good practice to write down the name of the person you are talking to, information they give you, and the date as soon as possible.

IF I AM TRANS OR NON-BINARY, CAN A DOMESTIC VIOLENCE PROGRAM DENY ME SERVICES OR OFFER ME DIFFERENT SERVICES THAN EVERYONE ELSE JUST BECAUSE OF MY GENDER IDENTITY AND EXPRESSION?

Denying you all services because of your sex, gender identity, gender expression, or sexual orientation is against the law. However, while programs are required to accommodate you, some limitation in services may be allowed, such as unisex bedrooms/bathrooms in the shelter, support groups, or community education prevention services. If the sex-specific services they offer corresponds with your gender identity, you should be allowed to access them.

A program's restrictive sex-segregated services must be explained and justified in their written policies as being "essential to the program's operation" which is a high bar. If they don't have policies addressing this, they cannot refuse to serve you.

Even if they have some sex-segregated services, the program must still provide you with help and offer you supportive services that are comparable in safety, quality, and amenities and meet your needs as a TGNCNB victim. For example, if you are given emergency housing off-site from the regular shelter, you should be provided the same access to counselors, support groups, and advocacy services as everyone else. Further, that alternative emergency housing should be safe and welcoming for TGNCNB people and your confidentiality and privacy needs safeguarded.

If a provider operates a sex-segregated or sex-specific program or service, their written policies must make clear who is benefitted (i.e. "female-identified only"). Again, you should be able to access any service which corresponds with your own gender identity and expression or where you feel safest. The program should simply ask you which service or group you want to join. If you have concerns about your safety those should be taken into serious consideration by the program. When you seek help, programs should not make assumptions about your gender, assume what services you want, ask inappropriate and intrusive questions about your anatomy or medical history, or make burdensome demands for you to produce identity or medical documents.

Note that, where they still exist, sex-segregated services often traditionally fall along a gender binary. For non-binary victims, you should directly and clearly express your safety and support needs to the program and tell them what help you need. A growing number of people identify and are legally recognized as non-binary, so you can ask the program to update their policies to support and help non-binary victims who may increasingly need non-gendered programming.

WHAT CAN I DO IF I'M BEING BULLIED OR HARRASSED BY OTHER CLIENTS BECAUSE I'M TGNCNB?

Although many people form supportive, healing relationships with fellow clients, on occasion, harassment or bullying in the shelter can occur. Such hurtful conduct likely violates the domestic violence program's explicit rules, and the harasser should be subject to accountability by staff. Domestic violence programs are required to have written procedures for dealing with incidents of discrimination, harassment, or bullying. If those procedures were not made available when you started in the program, you can ask for them. As a TGNCNB victim, you should not be asked to leave the program because the harasser does not want you there or is uncomfortable around you.

WHAT IF I'M A PARENT WHO NEEDS TO BRING MY TGNCNB CHILD WITH ME TO A DOMESTIC VIOLENCE SHELTER?

Regardless of their gender, a minor child accompanied by their parent who is a "victim of domestic violence" can be admitted into shelter and receive supportive children's services. Child residents also have the right to be free from bullying, harassment, or discrimination.

IF I ENTER A DOMESTIC VIOLENCE SHELTER, HOW WILL I KNOW HOW TO MAKE A COMPLAINT IF I BELIEVE I FACED HARRASSMENT AND DISCRIMINATION?

The shelter will do a formal intake with you if you come for services. At this intake, or within one working day of your admission, you must receive a copy of the program's policies that prohibit discrimination or harassment based upon gender identity or expression and other protected statuses. You must also receive notice of the right to present a grievance to the domestic violence program, to the local Department of Social Services that contracts for the local shelter services, and/or to the NYS Office of Children and Family Services that licenses the shelter. The notice must provide the procedures for presenting a grievance. If you need to make a complaint, follow the procedures outlined in the program's notice of your rights.

You have the right to make a complaint without fear of reprisal, such as being kicked out or refused re-admittance.

You may consider making a complaint on behalf of yourself or your child if:
1) The program does not have written policies in place justifying the sex-segregation or sex-designated services;
2) The program failed to provide you either full access or comparable services;
3) You believe the sex-segregation polices were unnecessary or unjustifiable; or
4) You were subjected to mistreatment, discrimination, bias, bullying, abuse, or harassment by staff or other residents.

Although you do not need a lawyer to help with an internal, administrative complaint you may want to consider consulting one to help you weigh your options and determine the next steps.

YOU COULD ALSO:

- File a complaint with the New York State Division of Human Rights
- For more information about filing a complaint, visit Empire Justice Center's Know Your Rights Guide
- File a civil rights complaint with their federal funders: VAWA or FVPSA
- Consider filing a civil rights lawsuit

Some of these options may cost money while others are free. Some options may be informal, while others may involve a legal filing with important deadlines to consider. Sometimes, simply knowing your rights and directly advocating for yourself can be enough to get you what you need.

WHERE CAN I FIND A LAWYER TO HELP ME DETERMINE MY OPTIONS OR FILE A COMPLAINT?

Empire Justice Center
Legal Services of the Hudson Valley
NYLAG
AVP
Onondaga VLP

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