

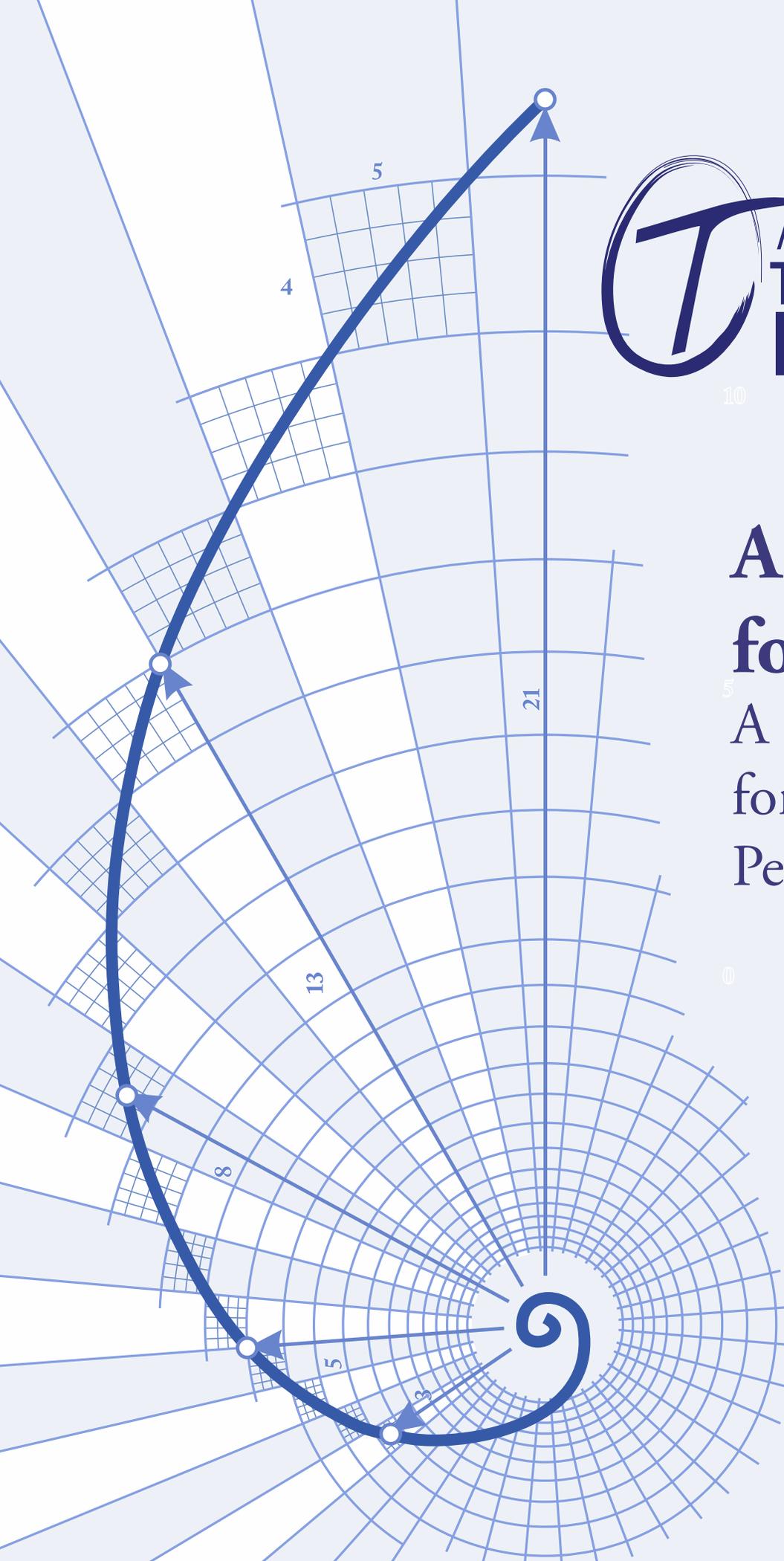


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# **A Blueprint for Equality**

*A Federal Agenda  
for Transgender  
People*

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# Introduction

It's hard to believe how much we've accomplished in eight years. Transgender people and issues are now solidly on the federal agenda.

When NCTE was founded in 2003, transgender people barely had a foot in the door of the Washington offices where major federal policy decisions take place. Now we're at every relevant meeting, and our impact is felt at almost every table where our issues are discussed. Working in collaboration with our many allies, leveraging our power by working in coalitions on every issue, NCTE has been able to advance an incredibly full agenda despite our small size.

This Blueprint for Equality represents a new stage in our movement for transgender equality through federal policy change. We present here an ambitious agenda for the coming years, using strategies we've shown to be effective and relationships we've built with many other advocates and federal agencies.

## Opening Doors for Trans Equality throughout the Federal Government

In contrast to the hostile environment we faced less than a decade ago, NCTE now is able to work with a federal government that can't deny the existence of transgender people or our policy concerns.

The White House has held listening sessions about transgender issues. The Secretary of State has advocated for our human rights abroad. The Secretary



of Health and Human Services has committed to studying how to include trans people in federal health surveys. Over a dozen pieces of pro-LGBT legislation have been introduced, each one appropriately transgender-inclusive. This is just a small sampling of the doors we've taken part in opening, working in coalition with our allies, to prepare for the next phase of policy change. NCTE is prepared to use our place on the federal agenda to continue assertively and smartly representing transgender people and our policy needs throughout the federal government.

## How Can Federal Policy Change Impact Transgender Lives?

Last year, the release of the National Transgender Discrimination Survey quantified for the first time on a national level what we have always known—trans people face disrespect, discrimination, and violence in all areas of life.

The federal government can play an important role in eliminating the structural and systemic barriers that cause these problems for transgender people and others. The policies we work on at the federal level are relevant for all transgender people in the United States, reducing discrimination in areas from employment to health care to housing. We actively advocate with and educate dozens of agencies with great success, and work on federal legislation that impacts trans lives.



## An Evolving Blueprint for the Next Phase of Transgender Federal Policy Success

In 2009, NCTE released our first agenda for federal policy advancement for transgender people. For three years, we have used it to educate policymakers and to focus our work and the work of our allies. Over time, however, we have identified additional policies that need to be addressed, as well as policies that have been successfully implemented and no longer need to be listed. Our growing policy expertise has also led us to further refine some of our recommendations. This new document represents a comprehensive and up-to-date review of federal policies that can impact trans people, providing a blueprint for the next phase of change.

### What This Blueprint Means for You

One goal of this blueprint is to provide trans people and allies with an understanding of the breadth of the transgender federal agenda. As you read, keep your own policy priorities in mind, and think about how some of these changes could impact your life, or the lives of your friends and family members. Think about how you can help advocate for positive changes from your own community.

While some of the work needed to advance federal policy requires specific expertise, these policies are advancing in large part because all transgender people and our allies around the country are educating the public, the media, representatives in Congress, and even local and state policymakers, who often become federal policymakers. Visit our website at [www.transequality.org](http://www.transequality.org) for ideas on how you can help us make change.



### Considerations

When reading this blueprint, please keep the following considerations in mind:

**Scope:** This agenda focuses exclusively on U.S. public policy at the federal level because that is NCTE's primary focus. Many other efforts are equally important to advancing transgender equality, including state and local political advocacy, public education, litigation, media advocacy, working with medical, educational, and other institutions, and providing services directly to transgender people and their families—however, these topics are not discussed here.

**Timing:** While some of the goals in this blueprint may take years to achieve, many are readily achievable in the next two years, and NCTE is working every day with our allies to accomplish them.

**Collaboration:** Smart and effective collaboration with a wide array of partners is a foundation of NCTE's work. When we say that “we” hope to achieve a federal policy goal, we include in that statement the work of our amazing and committed allies.

**Terminology:** Throughout this document, we use the words transgender and trans interchangeably. In most cases, we mean all people commonly described as transgender or gender nonconforming, though in some specific circumstances, a narrower definition is appropriate.



# ECONOMIC OPPORTUNITY

More than one in four transgender adults have lost at least one job due to bias, and more than three-fourths have experienced some form of workplace discrimination.<sup>1</sup> Biased refusal to hire, privacy violations, harassment, and even physical and sexual violence on the job are common occurrences, and experienced at even higher rates by transgender people of color. Many report changing jobs to avoid discrimination or the risk of discrimination. Extreme levels of unemployment and poverty lead many to become involved in underground economies—such as sex and drug work—in order to survive.

While 16 states, nearly 150 local jurisdictions, and hundreds of employers have adopted laws and policies to prohibit this discrimination, more than half the nation still lives without these critical protections. And while transgender people face unemployment at even higher rates than the rest of the U.S. workforce,<sup>2</sup> they can also face discrimination in the public jobs programs meant to connect them with jobs.

In recent years, courts and federal agencies have increasingly taken the view that discrimination against transgender people is prohibited by existing laws against sex discrimination<sup>3</sup>. This updated under-

standing of sex discrimination laws has the potential to be a powerful tool to combat employment bias, and NCTE has and will continue to work to more firmly establish this understanding of the law and the critical protection it can provide. Ultimately, however, passing a federal law to prohibit gender identity discrimination in the most specific terms is essential to ensuring that employers understand and consistently follow the law, and therefore to eliminating anti-trans discrimination.

## Policy steps

- Congress should pass the Employment Non-Discrimination Act (ENDA), which would prohibit discrimination in employment based on gender identity and sexual orientation.
- The President should issue an Executive Order prohibiting federal contractors and subcontractors from discriminating on the basis of gender identity and sexual orientation.
- The Equal Employment Opportunity Commission (EEOC) should investigate and mediate complaints from transgender people based on sex discrimination under Title VII of the Civil Rights Act of 1964.
- Each federal agency should issue a policy directive stating that it will ensure that federal employees will not be discriminated against on the basis of gender identity and that transgender discrimination claims will be processed according to Title VII procedures.
- The Occupational Safety and Health Administration (OSHA) should issue guidance clarifying that employers must provide all workers with full access to sanitary facilities consistent with their gender identity.

<sup>1</sup> Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 53. Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force (2011).

<sup>2</sup> *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 55.

# Economic Opportunity

- The Department of Homeland Security, Department of Justice, and other agencies should adopt uniform policies providing for the classification of transgender law enforcement and security officers on the basis of their gender identity for purposes of gender-specific job duties.
  - The Office of Personnel Management should ensure that Federal Employees Health Benefits plans provide coverage for medically necessary transition-related care for federal employees and their partners and dependents.
  - The Department of Labor should adopt clear national guidelines to prohibit discrimination and ensure fair treatment for transgender people at all One-Stop Career Centers.
- The Department of Labor should adopt clear national guidelines to prohibit discrimination and ensure fair treatment for transgender people in all Job Corps programs.
  - The Department of Labor should identify, promote and fund best practices for helping transgender people enter the workforce.
  - The Federal Aviation Administration (FAA) should revise its medical certification procedures to reflect current medical science and eliminate unnecessary obstacles for transgender pilots and others who need FAA medical certification for their jobs.

## Transgender Equality in the Federal Workforce

The United States government is the nation's largest employer, and it has made huge advancements in providing equal opportunity for transgender workers. In June 2009, President Obama issued a memorandum directing federal agencies to take all available steps to ensure equality for LGBT federal workers. In 2010 and 2011, the U.S. Office of Personnel Management (OPM) answered this call by amending the federal government's equal employment opportunity (EEO) policy and issuing detailed guidance to all federal agencies on supporting workplace transitions. NCTE worked to ensure this guidance addressed equal restroom access, dress codes, personnel records, and other critical issues for trans employees. OPM has worked with federal agencies to ensure equal employment opportunity for trans people, and numerous agencies have updated their internal EEO policies and conducted workplace training on transgender issues. These steps represent a strong example of what can and must be accomplished in every workplace.

NCTE and allies are working in 2012 to solidify and extend this progress. Despite new nondiscrimination policies, trans federal workers are still subject to a uniquely discriminatory and baseless across-the-board exclusion of medically necessary transition-related care from the health benefits they've earned. These discriminatory exclusions persist even as they are being increasingly rejected by other large employers, with 33% of companies surveyed for the 2012 HRC Corporate Equality Index providing inclusive benefits compared to less than 9% in 2009. We are also working to address persistent discrimination in some federal security and law enforcement positions and to ensure that policies fully respect trans workers' rights in these sectors. Across the federal government, we continue to press agencies to fully update their internal EEO policies and to raise awareness of trans workers' rights, to ensure that the nation's largest employer is also a leader in equal opportunity for all.



# HOUSING AND HOMELESSNESS

Shelter is a basic human right, yet trans people face severe discrimination and hardship in many ways as we pursue suitable housing. Whether it is fair participation in the rental and homebuying market or access to homeless shelters, the pervasive nature of discrimination follows trans people home.

When trying to rent or buy a home, one in five transgender people (19%) in the U.S. have been refused a home or apartment, and more than one in ten (11%) have been evicted, because of their gender identity<sup>1</sup>. In 2010, the U.S. Department of Housing and Urban Development (HUD) issued guidance stating that discrimination against transgender renters or homebuyers based on gender identity or gender stereotypes constitutes sex discrimination and is prohibited under the federal Fair Housing Act. While federal authorities have pursued transgender housing discrimination claims under this guidance, lack of awareness and legal clarity mean that discrimination persists. Strong, explicit legal protection from gender identity discrimination is essential to securing equal housing opportunities for transgender people.

Homelessness is also a critical issue for transgender people, with one in five having experienced homelessness at some time in their lives because of discrimination and family rejection<sup>2</sup>. As a result, an estimated 20-40% of the more than 1.6 million homeless youth in the United States are LGBT<sup>3</sup>.

1 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 112-113.

2 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 112.

3 Nico Quintana, Josh Rosenthal, and Jeff Krehely, *On the Streets: The Federal Response to Gay and Transgender Homeless Youth*, 6. Washington, DC: Center for American Progress (2010). Available at: <http://www.americanprogress.org/issues/2010/06/pdf/lgbtyouthhomelessness.pdf>.

Unfortunately, transgender people facing homelessness also face discrimination from agencies that should be helping them, with nearly one in three (29%) reporting being turned away from a shelter due to their transgender status<sup>4</sup>. While leading experts on homelessness recommend providing emergency housing consistent with a person's gender identity<sup>5</sup>, 42% of trans people facing homelessness have been forced to stay in a shelter living as the wrong gender<sup>6</sup>.

As noted above, some initial strong steps have been taken to address these issues by the Obama Administration. Additionally, HUD has required grantees, including homeless shelters, to abide by state and local nondiscrimination rules; the Substance Abuse and Mental Health Services Administration (SAMHSA) has created and promoted educational resources on serving LGBTQ homeless youth; and the Administration for Children and Families issued the largest-ever LGBT-focused federal grant to develop a model program to support LGBTQ foster youth and prevent them from experiencing or returning to homelessness. Far more must be done in the coming years.

4 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 116.

5 See, e.g., *New York City Division of Adult Services, Procedure No. 06-1-31: Transgender and Intersex Clients* (2006); Lisa Mottet and John M. Ohle, *Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People*, at 11-14. Washington, DC: National Gay and Lesbian Task Force and National Coalition for the Homeless (2003). Available at: <http://thetaskforce.org/downloads/reports/reports/TransitioningOurShelters.pdf>.

6 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 118.

# Housing and Homelessness

## Policy steps

- Congress should pass the Housing Opportunities Made Equal (HOME) Act, which would explicitly prohibit discrimination based on gender identity and sexual orientation in housing and lending.
- Congress should fully fund implementation of the Federal Strategic Plan to Prevent and End Homelessness, including expanding the nation's supply of affordable housing.
- The Department of Housing and Urban Development (HUD) should, through rulemaking or interpretive guidance, make clear that refusal by a HUD-funded housing provider to provide access to gender-specific temporary housing consistent with a person's gender identity because the person is transgender constitutes unlawful discrimination.
- The Departments of Housing and Urban Development and Health and Human Services should implement a unified homeless data collection system that includes data on gender identity and sexual orientation.
- The Departments of Housing and Urban Development and Health and Human Services should publish and promote best practices for supporting homeless transgender youth.
- Congress should appropriate funds to conduct the Prevalence and Incidence Study of runaway and homeless youth mandated by the Runaway and Homeless Youth Act of 2008.

## A Place to Call Home

*Excerpt from HUD Secretary Shaun Donovan's remarks at NCTE's Eighth Anniversary Awards Ceremony November 15, 2011*

I'm here this evening, because this Administration is not only committed to ensuring the transgender community has a seat at the table—but also a place to call home. Every person in this room knows that rights most people take for granted are routinely violated against transgender people. It's estimated that 1 in 5 transgender Americans have been refused a home or apartment—that more than 1 in 10 have been evicted because of their gender identity or expression.

Nowhere is the challenge clearer than in homelessness. Forty percent of homeless youth are LGBT—and half of them report experiencing homelessness as a result of their gender identity or expression. Even more troubling, the majority of them report harassment, difficulty, or even sexual assault when trying to access homeless shelters.

Allowing this to happen is wrong – and more importantly, it's not who we are as Americans. That's why I'm proud to stand before you tonight and say HUD has been a leader in the fight—your fight and my fight—for transgender equality ....

The story of HUD is a story of expanding civil rights—a story that begins with a painful history, but leaves a proud legacy: one of opening the doors of America's homes to all Americans.

Let me tell you about Mitch and Michelle DeShane. Two years ago Michelle wanted to add her partner Mitch, a transgender man, to her housing voucher. The local housing authority denied her request because the couple did not meet its definition of "family. Then, the housing authority referred the couple to a neighboring housing authority – because, as they were apparently told, and I quote, the neighboring housing authority, "accepts everyone – even Martians." That's just wrong. No one should be subject to that kind of treatment or denied access to housing assistance because of their gender identity ....

And our work isn't over. Not for all of us in this room—and certainly not for the countless transgender people across the country who face discrimination, harassment, and violence—even here in our national's capital .... So long as the violence, exclusion, and discrimination continue, there is more work to be done.



Bullying and violence in schools constitute a safety crisis, impacting the health and educational achievements of transgender and gender nonconforming youth. The National Transgender Discrimination Survey illustrates the alarming extent of the problem: 78% of respondents who were out as trans while in K-12 school indicated that they had been harassed on the basis of their gender identity, with over one-third (35%) reporting that the harassment escalated to physical assault. The abuse could be so severe that it resulted in almost one-sixth (15%) leaving school to escape<sup>1</sup>. Those who are able to persevere had significantly lower GPAs, were more likely to miss school out of concern for their safety, and were less likely to plan on continuing their education, according to data from GLSEN<sup>2</sup>. Perhaps most alarmingly, 51% of NCTE survey respondents who had been bullied reported attempting suicide<sup>3</sup>.

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1 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 36-38.

2 Joseph G. Kosciw, Emily A. Greytak, Elizabeth M. Diaz, and Mark J. Bartkiewicz. *The 2009 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools*, 45-50. New York: GLSEN (2010).

3 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 45.

President Obama and other federal officials have recognized the importance of improving school climates for transgender youth, and have participated in awareness-raising and inspirational projects to encourage trans students and speak out against violence in schools. In 2010, the Department of Education issued guidance to schools clarifying that bullying and discrimination against transgender and gender nonconforming students may trigger federal Title IX protections. NCTE staff participated in two Obama Administration conferences on preventing bullying and gender-based violence in 2011, and in November 2011 met with Obama Administration officials to discuss strategies for ending anti-transgender violence, including bullying and peer victimization in schools.

# Safe and Supportive Schools

## Policy steps

- The President and the Departments of Education and Health and Human Services should continue to devote resources and high-level attention to the problems of bullying, harassment, and peer violence, and should include explicit discussion of transgender and gender nonconforming youth in those efforts.
- The President should endorse, and Congress should pass, the Safe Schools Improvement Act, which would ensure that all schools and districts implement comprehensive and effective anti-bullying and anti-harassment policies that specifically include gender identity and sexual orientation.
- The President should endorse, and Congress should pass, the Student Non-Discrimination Act, which would prohibit discrimination in schools on the basis of gender identity and sexual orientation.
- The Department of Education should issue guidance clarifying the application of Title IX anti-discrimination protections to transgender and gender nonconforming youth, including the right of transgender students to access school facilities and campus housing, and otherwise be treated in accord with their gender identity.
- The Department of Education should enhance the transparency and effectiveness of Title IX enforcement by providing transgender-inclusive training for all Title IX officers and by tracking and reporting data on LGBT-related claims.
- The National Center for Education Statistics should ensure that data collection includes detailed information about bullying, harassment, and other school violence, including whether the victim's gender identity or expression were at issue.
- The Department of Education should mandate that all states provide comprehensive suicide prevention education to all high school students. The mandate should require that the curriculum meets minimum standards, including a discussion of LGBT youth and why they have an increased risk of suicide.
- The Departments of Education and Health and Human Services should develop new cultural competence and best practice resources for schools focusing on transgender and gender nonconforming youth and preventing their victimization.
- The Department of Education should provide guidance for transgender students on completing the Free Application for Federal Student Aid (FAFSA) and work with schools, the Selective Service System, and the Social Security Administration to ensure that applications are not unduly delayed or rejected because of gender or documentation issues.

## Creating Trans-Supportive Schools

While bullying and the need to support LGBT youth have become a national conversation, much of the real change is happening in local school districts and state legislatures because of the hard work of parents, youth, educators, and state equality advocates. These efforts have included adopting anti-discrimination and anti-bullying laws and policies that explicitly include gender identity and expression, as well as developing specific policies and training on supporting trans youth.

In December 2011, the *Boston Globe* highlighted these efforts by profiling a Maine family who fought for equal treatment for their transgender daughter, who suffered bullying that was exacerbated when she was singled out by administrators and forced to use a staff restroom. To build on and support local efforts around the country, NCTE has partnered with the Gay, Lesbian & Straight Education Network (GLSEN) to release a Model School District Policy on Transgender and Gender Nonconforming Students. Based on the experiences and policies of local school districts around the country, this essential resource provides clear and specific guidance for schools on preventing bullying, protecting student privacy, and ensuring an equal chance to learn. The model policy can be found at <http://bit.ly/zZYj8h>.

# ACCESS TO QUALITY HEALTH CARE

In a groundbreaking 2011 report, the U.S. Institute of Medicine (IOM) found that transgender people in the United States face serious health disparities and systemic barriers to care. These disparities are particularly acute for transgender people of color. At the same time, transgender people are more likely to be uninsured, to be unable to afford to pay for health care out of pocket, and to delay seeking health care because of cost or fear of discrimination<sup>1</sup>. The IOM report, together with recognition of LGBT health disparities in federal plans such as Healthy People 2020 and the 2011 National Prevention Strategy, represent important steps toward integrating these issues into broader efforts to improve the nation's health and combat all disparities. Still, federal efforts to address the health of transgender people have only just begun.

Discrimination against transgender people seeking health care is an urgent and widespread problem. For example, one-fifth of respondents in the National Transgender Discrimination Survey (NTDS) reported being turned away outright by a health care provider due to bias<sup>2</sup>. And due to discrimination and disrespect, 28% postponed or avoided medical treatment when they were sick or injured and 33% delayed or did not try to get preventive health care<sup>3</sup>. The Joint Commission, which accredits most U.S. hospitals, now requires hospitals to have general nondiscrimination policies that include gender identity and sexual orientation<sup>4</sup>. In 2010, the Obama Administration adopted

rules to ensure LGBT people have equal visitation and medical decision-making rights in hospitals. And for the first time, the Affordable Care Act of 2010 prohibited discrimination based on gender by most health care providers. Yet additional steps are urgently needed to clarify and strengthen the protections these measures provide for transgender and gender nonconforming people.

Building the cultural competency of health care providers is also critically important to the health of transgender people and is a vital corollary to nondiscrimination protections. Health care providers and support staff must become more knowledgeable about trans people's health care needs and how to address these needs. They must be able to communicate with trans people respectfully and sensitively, and treat information about a patient's transgender status as confidential. Fully 50% of NTDS respondents reported having to teach providers about some aspect of their health needs.

Difficulties in accessing health care arise for many transgender people even before they get to a doctor's office or hospital. Despite strides in expanding the number of people in the United States who are able to secure adequate health insurance, plans still frequently exclude coverage of any services for a transition-related medical purpose, even when the same or comparable services are routinely covered for other medical indications. These arbitrary exclusions have no basis in medical science and create a dangerous gap in access to quality and affordable care for transgender people. Leading employers, universities, and city governments are rapidly expanding employment-based coverage for transition-related care, yet discriminatory exclusions remain in most insurance plans.

1 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 76.

2 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 75.

3 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 76.

4 *The Joint Commission, Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care for the Lesbian, Gay, Bisexual, and Transgender (LGBT) Community: A Field Guide* (2011).

# Access to Quality Health Care

Finally, to adequately understand and meet the health needs of transgender people, systematic research and data collection on our population is essential. Until now, the absence of even the most basic demographic and health data on transgender people has been a major roadblock to improving health and eliminating disparities for trans people. The Institute of Medicine has recommended that data on gender identity and sexual orientation be routinely collected in electronic health records and in federally funded health surveys, and that the federal government provide expanded support for health research on transgender people<sup>5</sup>.

## Policy steps

- Congress should pass the Health Equity and Accountability Act, which would strengthen federal action to combat health disparities.
- The Department of Health and Human Services should promulgate regulations clarifying that the Affordable Care Act's prohibition on sex discrimination in any federally-funded health program or activity covers discrimination based on gender identity and gender stereotyping.
- The Department of Health and Human Services should issue strong federal standards for essential health benefits under the Affordable Care Act, including LGBT-inclusive nondiscrimination protections and a prohibition on arbitrary exclusions of essential benefits solely on the basis of medical diagnosis or condition.
- The Centers for Medicare & Medicaid Services should issue guidance to state Medicaid directors clarifying that the arbitrary exclusion of medically necessary transition-related care is inconsistent with federal law.
- The Office of the National Coordinator for Health Information Technology should include the collection of data on gender identity and sexual orientation within its meaningful use standards for electronic health records, together with strong privacy protections.
- The Department of Health and Human Services should allow federally qualified health centers (FQHCs) to use local data to determine the health needs of LGBT people and people living with HIV/AIDS in their areas and should provide support to FQHCs specifically serving these populations.
- The Agency for Healthcare Research and Quality (AHRQ) and the National Institutes of Health should formally designate LGBT people as a health disparity population for purposes of federal grants and research.
- The National Institutes of Health should establish and implement an LGBT health research agenda according to the recommendation of the 2011 Institute of Medicine report on LGBT health.
- The Substance Abuse and Mental Health Service Administration (SAMHSA) should develop updated resources for substance abuse treatment providers on serving transgender people.
- The Food and Drug Administration should lift the ban on blood donation by gay men, which has also been used to exclude transgender donors regardless of their gender or sexual orientation.
- The Department of Health and Human Services should identify and promote best practices for providing effective, culturally competent, and nondiscriminatory care to LGBT patients in Title X Family Planning Clinics.
- The Office of Global Affairs should engage with the World Health Organization (WHO) to support appropriate revisions to the International Classification of Diseases (ICD) to de-pathologize gender variance and reflect current medical science regarding gender identity.

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<sup>5</sup> IOM, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*, p. 299-304 (2011).

# FIGHTING HIV/AIDS



Overall, transgender people face HIV infection rates many times higher than the general population, and rates for transgender people of color are even higher<sup>1</sup>. Estimates are that one in four Black transgender people in the U.S. is living with HIV/AIDS<sup>2</sup>.

Discrimination, stigma, social isolation, bias among health and social service providers, and a lack of targeted prevention efforts have all contributed to these high levels of infection. The National HIV/AIDS Prevention Strategy issued in 2010 for the first time recognized that transgender people are at high risk for HIV infection, and that until recently only minimal efforts have been made to target the trans population for prevention and treatment. Where transgender people have been included at all, they have often been inaccurately and unhelpfully lumped together with “Men who Have Sex With Men” (MSM) rather than addressed as a distinct population<sup>3</sup>. This neglect has been deadly, because research has shown that such concentrated epidemics require targeted responses for the most at-risk populations.

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1 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 80; Centers for Disease Control and Prevention, *HIV Infection Among Transgender People* (2011). Available at: <http://www.cdc.gov/hiv/transgender/pdf/transgender.pdf>.

2 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 80.

3 White House Office of National AIDS Policy, *National HIV/AIDS Strategy for the United States*, at 14-15 (2010). Available at: <http://www.whitehouse.gov/sites/default/files/uploads/NHAS.pdf>.

Since the release of the National Strategy, the Centers for Disease Control and Prevention (CDC) has taken important steps toward addressing the trans HIV epidemic, including:

- Revising the national system for reporting HIV cases to capture sex assigned at birth and current gender identity in order to accurately assess the impact of HIV on trans people.
- Developing an HIV-related behavioral survey to monitor current HIV-related risk behaviors and prevention experiences among transgender women.
- Funding efforts to adapt proven behavioral HIV prevention programs for use with transgender people and to develop ground-breaking new interventions specifically aimed at transgender people.

However, there is still more to do in 2012 and beyond. Notably, while transgender people face high levels of HIV infection around the world, the U.S. has not yet taken concerted action to promote targeted prevention efforts for trans people globally.

# Fighting HIV/AIDS

## Policy steps

- Congress should fully fund implementation of the National HIV/AIDS Strategy.
- Congress should fully fund comprehensive sexuality education and defund ineffective and dangerous abstinence-only-until-marriage programs.
- The CDC and the Department of Justice should develop and implement comprehensive HIV prevention strategies for correctional facilities, including those overseen by the Federal Bureau of Prisons.
- The President's Emergency Plan for AIDS Relief (PEPFAR) should issue guidance for international HIV prevention efforts targeted at transgender people.
- The President's Emergency Plan for AIDS Relief (PEPFAR) should require all PEPFAR-funded programs to certify that they do not promote anti-LGBT messages or discriminate against LGBT people.



Transgender people today face an epidemic of anti-trans violence. Whether it occurs on our streets, in our schools, in our homes, or even comes from law enforcement or other officials, staggering levels of violence persist even as trans equality advances. The annual Transgender Day of Remembrance serves as a somber reminder of the losses suffered because of senseless and unjust acts of cruelty against transgender people. Twenty-six percent of respondents in the National Transgender Discrimination Survey have been physically assaulted on at least one occasion because of anti-trans bias<sup>1</sup>. Transgender women are disproportionately affected, with 50% of lethal anti-LGBT hate crimes committed against trans women and girls<sup>2</sup>. At the same time, 50% of transgender people report they are uncomfortable seeking police assistance<sup>3</sup>.

On October 28, 2009, President Obama made history by signing the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, marking the first time transgender people have been specifically protected under federal law. The law added gender identity to the categories included in existing federal hate crimes law and allowed local governments to receive assistance from the federal government to address hate crimes against transgender people. NCTE worked with the Department of Justice to implement this law and to enhance its work with local communities to prevent and respond to hate crimes. The Department of Justice

<sup>1</sup> *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 80.

<sup>2</sup> National Coalition of Anti-Violence Programs, *Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the United States in 2010*. New York, NY: NCAVP (2011). Available at: <http://avp.org/documents/NCAVPHateViolenceReport2011Final.pdf>.

<sup>3</sup> *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 162.

has also pursued investigations of alleged abuse of transgender people by police and prison officials. And in November 2011, officials from across the Obama Administration met with NCTE and other anti-violence advocates at the White House to discuss strategies to combat anti-transgender violence.

### Policy steps

- Congress should reauthorize the Violence Against Women Act (VAWA), and should expressly prohibit discrimination in VAWA-funded programs based on gender identity and sexual orientation.
- The Department of Justice should issue program guidance to clarify the application of the Violence Against Women Act and the Victims of Crime Act to LGBT people, so that local agencies understand their obligation to serve LGBT individuals.
- The Department of Justice should make nondiscrimination on the basis of gender identity and sexual orientation a mandatory condition of eligibility for federal crime prevention, investigation, and prosecution funding.
- The Department of Justice should require that gender identity and sexual orientation data be collected whenever demographic data is collected in programs for victims of crime.
- The Department of Justice should develop training materials for law enforcement officials and victim service providers to promote cultural competence for working with transgender people.

# IMPROVING THE LIVES OF TRANS OLDER ADULTS

According to the national Caring and Aging with Pride survey, transgender older adults are a “critically underserved population [ ] at heightened risk of physical and mental health disparities often combined with less social and community support.” The same survey found that 40% of transgender older adults have been denied health care or received inferior care due to bias<sup>1</sup>.

A recent survey of 320 area agencies and state units on aging found that more than one in four reported that transgender older adults would either not be welcomed by local service providers or the agency was unsure of how welcome they would be<sup>2</sup>. Other research has revealed discrimination and abuse of transgender residents in long-term care facilities<sup>3</sup>.

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1 Karen I. Frederickson-Goldsen et al., *The Aging and Health Report: Disparities and Resilience Among Lesbian, Gay, Bisexual and Transgender Older Adults*, at 5, 31. Available at: <http://caringandaging.org/wordpress/wp-content/uploads/2011/05/Full-Report-FINAL.pdf>.

2 Kelly Abel Knochel, Catherine F. Croghan, Rajean P. Moore, and Jean K. Quam, *Ready to Serve? The Aging Network and LGB and T Older Adults*, at 12. Washington, DC: National Association of Area Agencies on Aging, 2011. Available at: <http://www.n4a.org/pdf/ReadyToServe1.pdf>.

3 National Senior Citizens Law Center, et al., *Stories from the Field: LGBT Older Adults in Long-Term Care Facilities*. Washington, DC: NSCLC (2011). Available at: <http://www.lgbtlongtermcare.org/>.

Some initial steps have been taken by the Obama Administration to address these issues. In 2010, the U.S. Administration on Aging awarded an historic grant to establish the National Resource Center on LGBT Aging, to provide training, assistance and information to aging providers and older adults. The Centers for Medicare & Medicaid Services are also taking initial steps to promote LGBT cultural competence in long-term care. And the Departments of Housing and Urban Development and Health and Human Services held a summit in December 2011 to discuss promising practices for meeting the housing needs of LGBT older adults.

# Improving the Lives of Trans Older Adults

## Policy steps

- Congress should reauthorize the Older Americans Act and amend the Act to make explicit that LGBT older adults constitute a group with “greatest social need” and that federally-funded service providers may not exclude LGBT older adults from programs and services.
- Congress should fully fund implementation of the Elder Justice Act, and the Department of Health and Human Services should ensure that programs supported by the law give adequate attention to the vulnerabilities of LGBT older adults.
- The Administration on Aging should clarify through interpretive guidance that LGBT older adults constitute a group with “greatest social need” and that federally-funded service providers may not exclude LGBT older adults from programs and services.
- The Centers for Medicare & Medicaid Services should eliminate the arbitrary exclusion of transition-related surgical care from Medicare.
- The Centers for Medicare & Medicaid Services should revise federal nursing home guidelines to clarify the rights of LGBT residents to freedom from discriminatory abuse, personal privacy and dignity, and treatment consistent with a resident’s gender identity.
- The Centers for Medicare & Medicaid Services should revise federal Medicaid regulations to explicitly prohibit discrimination based on gender identity and sexual orientation in home- and community-based services.
- The Centers for Medicare & Medicaid Services should develop and promote LGBT competence training and tools for long-term care facility staff, surveyors and ombudspersons, home care providers, and others who work with older adults.

## Advancing a Trans Aging Agenda

In 2011, NCTE partnered with Services and Advocacy for GLBT Elders (SAGE) to develop a public policy agenda focused on the needs of older transgender people. While the challenges common to LGBT older adults have gained increased visibility in recent years, little study or discussion has focused on the specific needs and challenges facing transgender people as they age. NCTE and SAGE convened an advisory group of advocates and experts to focus on this issue over the course of the year. The advisory group included organizations such as FORGE, the Transgender Law Center, the National Center for Lesbian Rights, the Freedom Center for Social Justice, and the National Association of Area Agencies on Aging, as well as community activists and health providers. The group identified a wide array of key issues for trans older adults, including support from faith communities, cultural competence in aging and long-term care services, Medicare and VA coverage, research and data collection on trans older adults, and the continued need for employment opportunities as trans people age. NCTE and SAGE will release a report of the group’s findings and recommendations in 2012.

# COUNTING TRANS PEOPLE IN FEDERAL SURVEYS

Until NCTE released the National Transgender Discrimination Survey jointly with the National Gay and Lesbian Task Force in February 2011, there was little quantitative data to show the extent and severity of discrimination against transgender people. And as useful as the survey data has been, it still tells us only a fraction of what we need to know to understand and address the health and economic disparities and discrimination facing transgender people. We need data about the lives of transgender people that is comprehensive, systematic, and collected regularly on a large scale.

Federally-sponsored surveys conducted by the Departments of Labor, Education, Health and Human Services, Justice, and others are often considered the gold standard for data about the U.S. population. Counting trans people in these surveys would help make life better for transgender people in several very concrete ways. First, federally-sponsored surveys generally have significant credibility because of their scientific rigor, neutrality, and larger sample sizes. Second, these studies are often considered the strongest basis for identifying economic, health, and other disparities between segments of the population. Because trans people have never been counted in these surveys, it has been almost impossible to advocate for government or private funder attention to specific disparities. Third, inclusion in federal surveys would allow us for the first time to study transgender people as part of a larger sample of the entire national population, which is the best way to obtain truly representative data about trans people. When the federal government counts trans people in surveys, we will be able to quantify the health and economic disparities we know exist. With the data, advocacy for better programs and policies becomes possible, vital resources can be directed to trans people, and better health and economic outcomes will follow.

But counting trans people is not as easy as just saying it should be done. Federal surveys are generally rigorously scientific, and questions must be carefully crafted and tested before they can be used. This process can be complex and time consuming. Questions about gender identity must be written in a way that is understandable both to trans and non-trans people, and must be designed to tell us exactly what we need to know about trans people in a specific context such as employment or health.

The work to include data collection about the needs and experiences of trans people in federal surveys is well underway. NCTE and allied organizations are advocating in multiple agencies around inclusion in specific surveys. Additionally, the Secretary of Health and Human Services (HHS) has pledged “a clear path . . . to conduct methodological research and testing on transgender inclusive survey questions” to be used in federal health surveys. The Department of HHS is convening a series of research roundtables with national experts, including from NCTE, to determine the best way to help the department collect data specific to gender identity. That work is underway and should be completed in 2012 for possible inclusion in major federal surveys in 2013. The Centers for Disease Control has already begun testing questions for specific surveys such as the Youth Risk Behavior Survey.

# Counting Trans People in Federal Surveys

## Policy steps

- The Department of Health and Human Services should work with research experts to develop effective gender identity and sexual orientation measures for federal surveys.
  - The Department of Health and Human Services should include gender identity and sexual orientation measures in federal health surveys including the National Health Information Survey, the Behavioral Risk Factor Surveillance System, and the Youth Risk Behavior Survey.
  - The Department of Labor should include gender identity and sexual orientation measures in economic surveys including the Current Population Survey and the Survey on Income and Program Participation.
- The Department of Justice should include gender identity and sexual orientation measures in justice and corrections surveys including the National Crime Victimization Survey and the National Survey of Youth in Custody.
  - The Census Bureau should include gender identity and sexual orientation measures in the American Community Surveys and other surveys.

# ID DOCUMENTS AND PRIVACY

In today's world, identification documents are frequently needed to travel, open bank accounts, start new jobs, purchase alcohol, and purchase even some cold medicines. Recent voter suppression efforts by some state legislatures have also added voting as an activity in which trans people may face unfair difficulties without accurate ID.

Historically, state and federal governments have imposed intrusive and burdensome requirements—such as proof of surgery and court orders—that have made it impossible for many trans people to obtain accurate and consistent ID. For many people financial barriers, medical contraindications or the simple lack of medical need for surgeries make these requirements impossible to satisfy.

As a result, only one-fifth (21%) of transgender people who have transitioned in the National Transgender Discrimination Survey have been able to update all of their IDs and records with their new gender and one-third (33%) had updated none of their IDs or records. At the time of the survey, only 59% had been able to update their gender on their driver's license or state ID; 49% had updated their Social Security Record; 26% their passport; and just 24% their birth certificate<sup>1</sup>. The survey results also confirmed what most trans people already knew—that gender-incongruent identification exposes people to a range of negative outcomes, from denial of employment, housing, and public benefits to harassment and physical violence<sup>2</sup>.

Because of work by NCTE and activists around the country, this trend is now reversing. About half of states no longer impose such burdensome requirements for driver's licenses and state ID and growing numbers

1 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 140-50.

2 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 152-53.

are streamlining procedures. In 2010, the U.S. State Department eliminated the surgical requirement for updating passports. In 2011, state-level efforts won improvements in birth certificate laws in both California and Vermont, and NCTE worked with the American Association of Motor Vehicles Agencies to educate state agencies about current best practices. These developments represent a growing recognition that older, more restrictive policies have served little, if any purpose, and that reasonable policies enabling everyone to obtain accurate and consistent ID best serve both government agencies and individuals. At the same time, several federal agencies still maintain outdated and harmful restrictions on document change.

In addition to ID documents, other government records and programs currently cause the unintended disclosure of information about a person's transgender status without their consent. Chief among these are computer matching programs used by the Social Security Administration (SSA) for identity verification, which have outed individuals when gender data is inconsistent between records. In response to NCTE's efforts, SSA announced in 2011 that it would halt gender matching in its Social Security Number Verification System, the largest matching service used by private employers. This change alone will prevent workplace problems for many trans people. However, automated gender matching has not yet been eliminated in some SSA programs used to share data with state programs and other entities.

Government should not compel unnecessary or unaffordable medical procedures for purely bureaucratic purposes, nor should it needlessly compel the disclosure of a person's medical history or transgender status. The federal government has taken important steps to end these problems and should act promptly to modernize and harmonize policies across agencies.

# ID Documents and Privacy

## Policy steps

- The Social Security Administration should update its policy for changing gender markers on Social Security records to be consistent with the requirements for U.S. passports.
  - The Social Security Administration should eliminate computer matching of gender data in every one of its matching programs, including the Electronic Number Verification system and any other system that matches gender for client agencies and private entities.
  - The Department of State should further update the passport gender marker policy to allow for certification of gender change by licensed therapists and psychologists.
- The Center for Medicare and Medicaid Services should remove sex as a data field on Medicare cards.
  - The National Center for Health Statistics should issue an updated Model State Vital Statistics Act that provides for gender change on birth certificates without proof of specific medical or surgical procedures and without a court order.
  - The Office of Management and Budget should review all new government forms and updates to forms to eliminate collection of gender data in cases where it does not serve a clear programmatic purpose.

# THE RIGHT TO TRAVEL

In recent years, many Americans have been disturbed by the decision of the Transportation Security Agency (TSA) to implement airport screening procedures far more intrusive than anything previously seen in the United States, including aggressive body searches of passengers. These techniques—which often include touching travelers’ breasts and genitals—present especially serious concerns for transgender people, who can be outed against their will only to face bias and harassment. Current screening procedures can be especially traumatic for transgender children.

In the National Transgender Discrimination Survey data collected before these more intrusive techniques were introduced, nearly one in five transgender travelers reported having been harassed or disrespected by airport security screeners or other airport workers<sup>1</sup>. In 2011, the TSA began phasing in new screening technology that replaces electronic viewing of images of passengers’ unclothed bodies with automated detection of potentially hazardous objects. Unfortunately, this technology may still misidentify transgender people’s bodies as threats and lead to more intrusive and harassing treatment.

NCTE continues to hear troubling stories from transgender travelers about their treatment by TSA, as well as by officials at U.S. border crossings. While NCTE has long worked with TSA to promote better staff training, respond to individual complaints, and educate the trans traveling public, the agency’s lack of transparency and persistent use of invasive and unproven security procedures are a continuing cause for concern.

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<sup>1</sup> *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 130, 132.

## Policy steps

- The Transportation Security Administration should adopt more effective and less intrusive airport screening protocols that do not require additional screening of transgender travelers based solely on their personal characteristics, prosthetics, or clothing.
- The Transportation Security Administration should include transgender competence in its basic training curriculum for airport security screeners and other Transportation Security Officers.
- The Transportation Security Administration should issue guidance for transgender travelers to enhance their understanding of their rights and how screening methods may affect them and to help mitigate the harms of current screening methods.
- U.S. Customs and Border Patrol (CBP) should include transgender competence in its basic training curriculum for CBP agents.
- U.S. Customs and Border Patrol should adopt a policy for physical searches that permits a transgender person to choose whether they will be searched by a male or female officer.



All people should be able to access government services and publicly funded programs without fear that they will be turned away or mistreated because of who they are. Yet transgender and gender nonconforming people still face untenable levels of disrespect, discrimination, and even violence accessing public programs and social services.

In fact, the National Transgender Discrimination Survey showed that 32% of trans people reported experiencing harassment, discrimination, or violence when trying to access a government service or program<sup>1</sup>. This kind of publicly supported discrimination is unacceptable, and contrary to the goals of programs designed to serve public needs. Some federal departments and agencies have adopted inclusive nondiscrimination rules for the programs they administer, the programs they fund state or private groups to administer, or both. Broad action across the government is needed to ensure that transgender people are not unfairly denied access to a public program or service.

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<sup>1</sup> *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 133.

### Policy steps

- Each federal department and independent agency should adopt a formal policy prohibiting discrimination based on gender identity and sexual orientation in its programs, activities, and funding.

# IMMIGRATION REFORM

As our political system fails to deliver meaningful immigration reform, millions of individuals and families in the United States face unspeakable hardships, including the forced separation of families, escalating deportations of individuals with deep roots in their communities who have committed no serious wrongdoing, and indefinite detention in cruel and abusive conditions. The government's failure to recognize LGBT families exacerbates the hardships on our community, and transgender people frequently find their relationships challenged regardless of the gender of their partner. For trans people who have legal status, documents that reflect the wrong gender contribute to the discrimination trans immigrants face.

Current immigration enforcement policies, most notably the failed and dangerous Secure Communities program, make our communities less secure by enlisting local law enforcement to enforce immigration laws, and undermining community trust in law enforcement. Although transgender immigrants are at high risk of being victims of violent crime, they are frequently afraid to seek assistance from law enforcement. According to the NTDS, 46% of all transgender people, and 51% of Latino transgender people, state that they are uncomfortable seeking police assistance<sup>1</sup>. Programs such as Secure Communities make an extremely vulnerable population even less likely to report crimes or be willing to testify in criminal cases and create incentives for racial profiling.

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<sup>1</sup> *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 162.

Finally, immediate action is needed to reform our costly and inhumane system of prolonged immigration detention, in which transgender people—many of them fleeing violence and persecution in their countries of origin—are particularly vulnerable to abuse. The Department of Homeland Security (DHS) in 2009 promised substantial reforms, and NCTE has worked with many other human rights advocates to see reforms enacted, but little has changed. DHS still detains hundreds of thousands of people each year in harsh facilities rife with abuse, and lacks any binding standards or meaningful accountability for those it contracts with to operate them. Transgender detainees are still subjected to abuse, prolonged isolation, and deprivation of medical care. And DHS has inexcusably opposed applying national rules to implement the Prison Rape Elimination Act (PREA) to its facilities despite recent incidents of sexual abuse.

# Immigration Reform

## Policy steps

- Congress should pass comprehensive immigration reform that includes the Uniting American Families Act, which would grant equal immigration rights to bi-national same-sex couples.
  - Congress should pass the DREAM Act to provide youth who grew up in the U.S. and go to college or serve in the military with legal status and a path to citizenship.
  - Congress should pass the Refugee Protection Act, which would provide critical protections for refugees and their families and eliminate arbitrary filing deadlines for those seeking asylum.
  - U.S. Citizenship and Immigration Services should hold green card applications of foreign-born same-sex spouses of U.S. citizens and residents in abeyance until the courts or Congress resolve the constitutionality of the Defense of Marriage Act.
  - U.S. Citizenship and Immigration Services should provide a clear policy for recording updated gender designations on immigration documents, based on existing policy for updating U.S. passports and federal personnel records.
  - U.S. Citizenship and Immigration Services should clarify through internal guidance that the Defense of Marriage Act does not apply to a marriage that was recognized as a different-sex marriage where and when it was entered into, regardless of a spouse's prior or subsequent gender transition.
- The Department of Justice should promulgate final regulations to implement the Prison Rape Elimination Act (PREA) that apply fully to all detention facilities, including immigration detention facilities administered by U.S. Immigration and Customs Enforcement and the Office of Refugee Resettlement.
  - The Department of Homeland Security should halt the controversial Secure Communities program, which deters vulnerable populations from seeking police assistance.
  - The Department of Homeland Security should expand the use of alternatives to secure detention and end the detention of asylum-seekers, transgender people, people with HIV, and other vulnerable groups.
  - The Department of Homeland Security should put an immediate end to the use of prolonged segregation of transgender detainees, survivors of abuse, and others at risk of abuse.
  - The Department of Homeland Security should implement a standardized risk assessment and classification system and train its officers on identification of vulnerable LGBT individuals and asylum-seekers.
  - The Department of Homeland Security should adopt formal guidelines for medical care for transgender detainees, based on the World Professional Association for Transgender Health (WPATH) Standards of Care and the policies of the Federal Bureau of Prisons.

# PRISON AND DETENTION REFORM

Nearly one in six transgender people (16%) (including 21% of transgender women) have been incarcerated at some point in their lives—far higher than the rate for the general population. Among Black transgender people, nearly half (47%) have been incarcerated at some point<sup>1</sup>. These high rates of incarceration are driven by disproportionate poverty, homelessness, discrimination, participation in street economies, and in some cases, law enforcement bias. Trans people are also at high risk of abuse in prisons, jails, and juvenile detention<sup>2</sup>. The categorical denial of transition-related medical care is common, as is prolonged isolation of trans people, which has been shown to have devastating effects on mental health. These abuses occur within the context of a broken, overcrowded, and increasingly privatized prison system. Addressing both the causes of over-incarceration and the intolerable conditions of prisons, jails, and detention facilities are urgent issues for trans people and our communities.

1 *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 163.

2 *National Prison Rape Elimination Commission, Report*, at 73 (2009); Valerie Jenness et al., *Violence in California correctional facilities: An empirical examination of sexual assault*. Irvine, CA: Center for Evidence-Based Corrections (2009).

Some progress is being made. In 2011, based on the input of NCTE and many others, the U.S. Justice Department proposed national regulations to prevent sexual abuse in prisons and jails, including specific measures to protect transgender people. We expect the final Prison Rape Elimination Act rules to be released in early 2012. Thanks to the expert work of LGBT legal organizations, the Federal Bureau of Prisons adopted new guidelines in 2011 for medical care for transgender inmates as part of a groundbreaking legal settlement, and major rulings from two federal appeals courts in 2011 are helping to make clear that the Constitution forbids states from categorically denying transition-related care to incarcerated and detained persons. A growing number of local and state agencies have adopted comprehensive policies specifically aimed at improving the treatment of transgender people. And the Department of Justice has begun investigating abuses targeting LGBT people in state prisons and jails. We need to build on these successes and ensure that all agencies that incarcerate or detain take the necessary steps to ensure that no one is abused, denied medical care, or subjected to inhumane conditions.

# Prison Reform

## Policy steps

- The Department of Justice should issue strong final regulations to implement the Prison Rape Elimination Act (PREA). These regulations should apply to all facilities that incarcerate or detain individuals and should fully address the needs and vulnerabilities of transgender and gender nonconforming people, including individualized housing determinations and strict limits on involuntary segregation.
- The Federal Bureau of Prisons should fully implement its 2011 interim guidance on medical care for trans inmates through a formal Program Statement.
- The Federal Bureau of Prisons should establish a multidisciplinary committee, with input from outside experts, to make individualized housing determinations for transgender inmates.
- The Federal Bureau of Prisons should establish a standardized process for transgender inmates to make an election whether to be subject to physical searches by male or female officers.

## Ending Sexual Abuse in Prison and Detention

Passed unanimously by Congress in 2003, the Prison Rape Elimination Act (PREA) requires the Department of Justice (DOJ) to issue binding national standards to prevent and respond to sexual abuse that would apply to all facilities that confine persons in the United States and receive federal funding. Following years of study and hearings, including testimony from LGBT advocates and survivors of abuse, a National Prison Rape Elimination Commission established by Congress issued a report and recommendations in 2009. Among the Commission's recommendations were individualized housing decisions for transgender people (instead of housing based solely on birth-assigned gender or anatomy), restricting the use of protective isolation, limits on invasive search procedures, staff training on LGBT issues, and external monitoring of facility practices.

In the last three years, NCTE has worked with a large and diverse coalition, led by Just Detention International, to advocate with DOJ for strong standards that build on the Commission's recommendations. Working with the National Center for Lesbian Rights, Lambda Legal, the ACLU, the Sylvia Rivera Law Project, the Transgender Law Center, and the National Juvenile Defender Center, NCTE took a lead role in drafting extensive LGBT-focused comments for DOJ in 2010 and again in 2011, and in organizing hundreds of other organizations and individuals to submit comments to DOJ. In 2011, DOJ announced proposed PREA regulations that were strong in many respects but lacked some critical protections and failed to cover facilities holding thousands of immigration detainees. NCTE has pressed the Obama Administration to make sure that all facilities where people are confined are covered by the final rules. NCTE also plans to work with national, state, and local organizations to ensure that the PREA rules are fully implemented nationwide.

# OPEN MILITARY SERVICE



Transgender people have served with distinction, but in silence, in every branch of our armed forces. According to the National Transgender Discrimination Survey, one in five transgender adults is a veteran<sup>1</sup>. But while the repeal of “Don’t Ask, Don’t Tell” in 2010 has allowed lesbian, gay, and bisexual troops to serve openly, transgender people are still forced to lie about who they are in order to serve their country.

The ban on open service for transgender people is not mandated by any law passed by Congress. The military maintains its own rules for who is eligible to serve, which can be changed without congressional action. The transgender ban is the result of archaic rules that treat transgender people as mentally and medically unfit, rules that are based on outdated, unfounded stereotypes. Gay, lesbian, and bisexual service members were also once deemed unfit. There

<sup>1</sup> *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 30.

is simply no basis in medical science or military need for excluding transgender people from serving openly. Just as there was no basis for believing that openly gay, lesbian, or bisexual service members were unfit to serve or harmful to good order, there is no basis for turning away or drumming out transgender people from our armed forces.

This policy ruins lives and careers, while squandering money and skills that our forces need to carry out their missions. Policies of this kind are rejected by a growing number of our military allies, including Australia, Canada, the United Kingdom, and others. The President and the Pentagon have the power and the responsibility to end this policy.

## Policy steps

- The Department of Defense should revise military medical regulations to permit transgender people to serve openly.

“We’re an institution that values integrity and then asks other people to join us, work with us, fight with us, die with us, and lie about who they are the whole time they’re in the military. That’s what just doesn’t make any sense to me. And while they’re here and able to do that, even in the policy that we have, they are actually individuals who go through extraordinary pain to sustain that lie.”

–Joint Chiefs of Staff Chairman Adm. Michael Mullen, testifying on “Don’t Ask, Don’t Tell” before the Senate Armed Services Committee, December 2, 2010

# HONORING OUR VETERANS

Despite a continuing ban on open military service by transgender people, many have made extraordinary personal sacrifices to serve their country. Estimates put the number of transgender veterans in the hundreds of thousands, and the National Transgender Discrimination Survey found that 20% of transgender adults are veterans<sup>1</sup>. However, many of these veterans have been denied access to medical care and other services guaranteed through the Veterans Administration (VA), and have faced discrimination and harassment at VA facilities.

The VA has taken important steps to address these discriminatory practices and improve treatment of trans vets. In June 2011, the VA issued a directive to all its facilities directing them to provide competent and respectful care for trans veterans and maintain a zero-tolerance policy for harassment on the basis of gender identity or expression. The VA directive also clarifies that veterans' medical benefits include all non-surgical, medically necessary transition-related care, including hormone therapy and pre- and post-surgical service. Finally, the Directive requires improvements in VA recordkeeping, permitting veterans to provide preferred names and self-identified gender to be reflected on their documentation and medical records, promoting privacy and respect for trans veterans. NCTE played a key role in securing this critical policy statement, and in 2012 will release a model policy to help local VA facilities fully implement the national guidance.

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<sup>1</sup> *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, at 30.

There is still more that needs to be done to ensure that transgender people receive equal access to benefits. The VA has so far maintained arbitrary and outdated regulations prohibiting coverage for transition-related surgeries for veterans. Veterans also continue to encounter difficulty obtaining employment and public benefits because they have difficulty amending military service records. While the law allows for records changes necessary to avoid unfairness, current service procedures are often unclear and produce inconsistent results for transgender veterans.

## Policy steps

- The Department of Veterans Affairs should eliminate outdated regulations prohibiting coverage for medically necessary transition-related surgeries for eligible veterans and dependents.
- The Department of Veterans Affairs should develop and implement training on LGBT cultural competence for VA staff, including clinicians.
- The Department of Defense should adopt a uniform policy for updating gender in military service records, comparable to existing policies for U.S. passports and federal civilian personnel records.

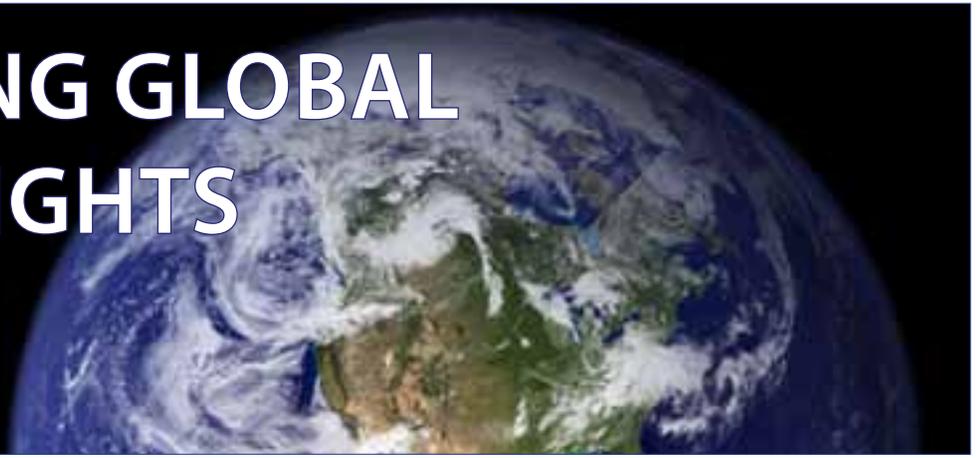
# FAMILY AND RELATIONSHIP RECOGNITION

The government should value and support all families. Discrimination at both the federal and state levels prevents people from accessing legal protections and public benefits for couples and families. When it concerns the ability to take time from work to care for a sick family member, the right to survivor's Social Security benefits, or the ability to adopt or foster a child, LGBT families should be treated equally. Currently, federal law tolerates discrimination in adoption and foster care placements, and mandates it when it comes to recognizing marriages. Transgender people and their spouses can be impacted by the federal Defense of Marriage Act even if they married as a different-sex couple under state law, due to inconsistent interpretation and application of the law by federal agencies. While the Obama Administration has taken significant steps to address these problems, they require unequivocal legal protections.

## Policy steps

- Congress should pass the Every Child Deserves a Family Act, which would prohibit discrimination in adoption and foster care placements based on gender identity and sexual orientation.
- Congress should repeal the discriminatory Defense of Marriage Act by passing the Respect for Marriage Act.
- All federal agencies that administer benefit programs in which marriage is a factor, such as the Social Security Administration, should clarify through internal guidance that the Defense of Marriage Act does not apply to a marriage that was recognized as a different-sex marriage where and when it was entered into, regardless of a spouse's prior or subsequent gender transition.

# ADVANCING GLOBAL HUMAN RIGHTS



The United States has long been a leader in advancing human rights around the world. Our nation's role in advancing human rights worldwide is not only the right thing to do—it is critical to the interests of the United States. As a member of the Council for Global Equality, NCTE works with the Council to ensure that the United States uses its diplomatic, political, and economic influence to oppose human rights abuses that are too often directed at individuals because of their gender identity or sexual orientation.

Under the Obama Administration, the U.S. has taken a strong leadership role at the United Nations (UN) and in our other multilateral and bilateral relationships. In 2010, the State Department began for the first time to systematically examine anti-LGBT human rights abuses in its annual country reports.

In December 2011, President Obama released a Presidential Memorandum directing all federal agencies abroad to promote and protect the human rights of LGBT people in U.S. diplomacy and foreign assistance work. The same day, Secretary of State Hilary Clinton spoke about LGBT rights at the UN in Geneva and expressed a strong U.S. position in support of the human rights of worldwide LGBT people, making a case that ensuring our human rights is a basic responsibility of the United States and the world.

## Policy steps

- All federal agencies working abroad should assertively implement the December 2011 Presidential Memorandum to promote and protect the human rights of LGBT people in U.S. diplomacy and foreign assistance work.
- The Department of State should engage in a vigorous and concerted effort to use people-to-people exchanges and speaker programs to advance understanding that transgender rights are human rights.
- The U.S. Trade Representative should ensure that the human rights safeguard clause in any prospective bilateral or regional trade accord should include specific reference to transgender populations.
- The Department of Commerce should introduce transgender equality into the dialogue and work programs of American Chambers of Commerce abroad.
- The Bureau of Population, Refugees and Migration should continue its work on enhancing protection of LGBT refugees and implement a transparent, meaningful system of expedited processing for the resettlement of refugees who face an imminent risk of danger in their countries of first asylum, in coordination with the Department of Homeland Security.

# Advancing Global Human Rights

## Free and Equal in Dignity and Rights

*Excerpt from Secretary Hillary Clinton Speech to the United Nations on Human Rights Day  
December 6, 2011*

... Today, I want to talk about the work we have left to do to protect one group of people whose human rights are still denied in too many parts of the world today. In many ways, they are an invisible minority. They are arrested, beaten, terrorized, even executed. Many are treated with contempt and violence by their fellow citizens while authorities empowered to protect them look the other way or, too often, even join in the abuse. They are denied opportunities to work and learn, driven from their homes and countries, and forced to suppress or deny who they are to protect themselves from harm.

I am talking about gay, lesbian, bisexual, and transgender people, human beings born free and given bestowed equality and dignity, who have a right to claim that, which is now one of the remaining human rights challenges of our time. I speak about this subject knowing that my own country's record on human rights for gay people is far from perfect. Until 2003, it was still a crime in parts of our country. Many LGBT Americans have endured violence and harassment in their own lives, and for some, including many young people, bullying and exclusion are daily experiences. So we, like all nations, have more work to do to protect human rights at home.

...

It is violation of human rights when people are beaten or killed because of their sexual orientation, or because they do not conform to cultural norms about how men and women should look or behave. It is a violation of human rights when governments declare it illegal to be gay, or allow those who harm gay people to go unpunished. It is a violation of human rights when lesbian or transgendered women are subjected to so-called corrective rape, or forcibly subjected to hormone treatments, or when people are murdered after public calls for violence toward gays, or when they are forced to flee their nations and seek asylum in other lands to save their lives. And it is a violation of human rights when life-saving care is withheld from people because they are gay, or equal access to justice is denied to people because they are gay, or public spaces are out of bounds to people because they are gay. No matter what we look like, where we come from, or who we are, we are all equally entitled to our human rights and dignity.

...

[T]o LGBT men and women worldwide, let me say this: Wherever you live and whatever the circumstances of your life, whether you are connected to a network of support or feel isolated and vulnerable, please know that you are not alone. People around the globe are working hard to support you and to bring an end to the injustices and dangers you face. That is certainly true for my country. And you have an ally in the United States of America and you have millions of friends among the American people.



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