

TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO'S TRANSGENDER COMMUNITIES

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I. INTRODUCTION

A. Executive Summary

Transgender communities across the U.S. are making great strides in altering the legal and social understanding of gender identity issues. As of May 2003, three states and 57 local jurisdictions offer explicit anti-discrimination protection for transgender people.¹ In addition, over 120 companies protect their transgender employees through explicit anti-discrimination policies.² Transgender people are increasingly being asked to tell their stories in print and broadcast media, community meetings, and classrooms. Amidst all of this progress, however, discrimination and severe legal difficulties persist.

In the spring of 2002, the National Center for Lesbian Rights and the Transgender Law Center conducted a survey to identify and quantify gender identity-related legal problems. The survey asked participants to report their experiences in 10 different legal areas, to prioritize those areas by selecting the three they thought most important, and to share personal information about themselves in order to collect demographic data.

As is obvious from the findings in *Trans Realities*, the people who completed the survey face an array of legal challenges in expressing their gender identity due to bias and ignorance regarding transgender issues.

Trans Realities reveals that:

- Nearly 1 in every 2 respondents has experienced gender identity based employment discrimination
- More than 1 in every 3 respondents has suffered from gender identity discrimination in a place of public accommodation
- Nearly 1 in every 3 respondents has been the victim of gender identity discrimination in housing
- Over 30% of respondents report that they have been discriminated against while trying to access health care
- More than 1 in 4 respondents have been harassed or abused by a police officer

¹ **Non-Discrimination Laws in the US that Explicitly Include Transgender People**, Transgender Law and Policy Institute as of May 2003. Chart available at: www.transgenderlaw.org/ndlaws/chart.pdf

² **Private Employers That Include Gender Identity in Their Non-Discrimination Policy**, Human Rights Campaign as of May 2003. Available at: www.hrc.org/worknet/asp_search/results.asp?sKey=List&List=GI&t=GI

- 1 of every 5 respondents has suffered discrimination while attempting to access services from a social service provider
- 14% of respondents have suffered from discrimination in jail or prison

Trans Realities adds flesh to these stark numbers by sharing the personal stories of several clients who have sought help from the National Center for Lesbian Rights and/or the Transgender Law Center. By combining statistical and anecdotal information, the report provides a clearer picture of the challenges faced by the 155 survey respondents.

This report is not, and should not be understood to be, a definitive statement on the legal needs of transgender communities in San Francisco. As is clear from the demographic information, some communities are likely underrepresented by the respondent pool (Asian-Americans, for example) and other communities are likely overrepresented (European-Americans, for example). However, it is an accurate snapshot of the experiences and priorities of the people who donated their time and stories to make collection of this data possible.

Trans Realities is an important resource for community members and allies, social service providers, and decision makers in better understanding ways in which expression of a transgender person's gender identity exposes them to bias and harassment. It is also a reminder that our current legal system is largely out of step with the needs and experiences of transgender people.

Finally, NCLR and TLC see the report as a tool in further understanding the existing legal need and potential priorities of the transgender civil rights movement. Community organizations are most effective when they are responding to actual, instead of perceived, community need. This report is one step in identifying those needs and priorities. However, further research and discussion are strongly encouraged to test the findings of this report and to insure that any excluded voices are heard and incorporated.

B. Acknowledgements

Many members of San Francisco's transgender communities have become used to people they don't know walking up to them and asking personal questions. Reporters, students with school projects, interns, researchers, and activists are all working to "better understand" the transgender experience. Often times, the person asking the question offers nothing in return. Sometimes, they and their "project" are never seen again. The 155 participants in this survey had little expectation that we would be any different. Yet, each one of them gave freely of their time and experience to help us gather the data in this report. Obviously, we could not have done it without their generosity.

This report is a direct result of the vision of the founding board members of Pride Law Fund. PLF awarded their first Tom Steel post-graduate Fellowship to us to work on transgender legal issues. Their recognition of the importance of funding transgender civil rights work, and specifically the importance of collecting basic data on the legal needs of transgender people, made this report possible.

The Transgender Law Project Advisory Committee and Aplomb, Inc were instrumental in designing the survey used to collect this data. Dana Peters, Ally Adamo, and Tracy Garza contributed greatly to the success of the report by bringing in cooperating agencies and conducting outreach. In fact, Tracy Garza single-handedly made the survey available to mono-lingual Spanish speaking participants. Adela Vasquez, Tumeka Gonzalez, Dion Manley, Joanne Keatley, Melenie Eleneke, Rachel-Janelle Light, Joel Levine, Mary Monihan, and Laurie Lenrow facilitated making the survey available to community members. Marina Centoni created the survey database and the tools for analyzing the data. Andre Castello entered many of the raw surveys into the database. Each of these people contributed significantly to the success of the study and report. The end result would have suffered if not for their participation.

III. DATA ANALYSIS

A. Areas of discrimination

One of the most eloquent responses to the survey came from a participant who wrote, “Discrimination is not the only reason a transgender person might need free legal help!” This is undoubtedly true. In fact, a recent report by the State Bar of California concludes that only one legal aid attorney exists for every 10,000 low-income people in California.³ *Trans Realities* should be read in the context of, not separate from, other reports on legal needs.

The intent of this report is to foster a better understanding of the legal needs experienced by transgender people specifically because of legal or societal barriers to the expression of their gender identity. The survey upon which this report is based did not track actual filings of anti-discrimination complaints or lawsuits. Instead, it tracked self reported instances of discrimination. Because it is often hard to determine if discrimination is based on any one characteristic (race, gender, gender identity, sexual orientation, disability, etc) or a combination of the above, the survey recognized the multiple motivations that can underlie an instance of discrimination by not requiring respondents to note examples of discrimination based solely on their gender identity. Instead, respondents were asked to note any instances where their gender identity or perceived gender identity was a factor in the discrimination.

The survey was designed to gather quantitative, not qualitative, data. To flesh out the survey data, anecdotal experiences of clients have been included. These examples are meant to illustrate, not exhaust, the types of discrimination that transgender people face. Many of these stories come from people living and working in San Francisco. Some, however, come from other parts of the country. The location of each story has been identified for the sake of accuracy. Clients’ names have been omitted from their stories to protect their privacy.

³ “The Path to Equal Justice” State Bar of California, 2002. The report went on to reveal that “72 percent of California’s low-income people do not receive the legal help they need to resolve basic problems relating to home, health, and education.” The full report is available on-line at: <http://www.calbar.ca.gov/calbar/pdfs/accessjustice/2002-Access-Justice-Report.pdf>

1. Ability to Marry

While only 9% of survey respondents report facing legal problems in forming valid marriages, over three times that many (30%) listed it as one of the three areas most important to them. This is an understandable disparity. For many people, marriage is one of the most significant legal and social contracts they will enter into in their lives. Any threat to the ability to marry, or to defend the validity of an existing marriage, causes a great deal of stress and uncertainty for people.

It is important to clarify that a marriage can only be challenged *by a limited number of parties*. Either spouse can challenge the marriage through a divorce action or an action attempting to prove that no valid marriage ever existed. The government can challenge the marriage if one or both partners are trying to assert federal or other governmental marriage rights (for example, immigration based on a marriage or the collection of a state pension benefit for surviving spouses). The only other class of challenger would be a person or entity who has a financial stake in the marriage (for example, an insurance company). Because the pool of potential challengers is small, it is rare for an actual challenge to be brought. And while transgender people are at greater risk for having their marriages challenged, anecdotal evidence indicates that only a small percentage of those marriages are challenged.

The central reason that marriages involving a transgender person are open to challenge is that every state in the U.S. currently denies same-sex couples the right to marry. This exclusion affects transgender people disproportionately, regardless of their sexual orientation, because laws in most states do not clearly or consistently define a transgender person's legal gender. As a result, many transgender people who are married are vulnerable to having a court determine that the transgender person is legally a member of their birth sex and that the marriage is therefore a same-sex union rather than a valid, different-gender marriage. As explained below, transgender persons who transition after entering into a marriage may also have the validity of their marriage questioned.

Transition during marriage

It is not uncommon for a couple who entered into a heterosexual marriage to remain married after one of the partners transitions. While no court in California has specifically ruled on the continuing validity of such a marriage, it is well settled that a marriage that is valid when celebrated continues to be valid until one of the parties obtains a divorce or dies. Based on these general legal principles, it is believed that marriages in which one spouse transitions continue to be valid.

Nonetheless, couples in these marriages often have trouble asserting specific marital rights because both spouses are now of the same sex. For instance, one couple in Central California who had been married for fifteen years and who stayed together after one partner transitioned had trouble accessing spousal health insurance coverage. The insurance provider argued that the insurance plan clearly stipulated that married couples had to be male/female. The fact that this couple was now both female, therefore, made it “impossible” for the company to cover the spouse. While the couple could have pressed the issue via litigation, doing so would have likely cost more than the money they were going to save by having both people on the same insurance plan.

Transition prior to marriage

Couples where one partner transitioned prior to the marriage encounter a different problem. Because they are a heterosexual couple, it is easier for them to assert their rights once they are married (for example, a title company is unlikely to even know that one partner is transgender). However, their marriages are more likely to be challenged when the marriage dissolves due to divorce or death. Issues around child custody and visitation are clear examples of why a marriage might be challenged.

Occasionally, when a marriage breaks up, one partner will attempt to escape child support responsibilities or attempt to deny their ex-partner parental rights by arguing that the marriage is not valid. For instance, one man who works in San Francisco is currently trying to prove that he is the legal father of his twins. His ex-wife has challenged his parental rights by claiming that their marriage was never valid. In California, fortunately, existing family law statutes and court decisions will likely protect the parental rights of a person who is understood to be a child’s parent even if the underlying marriage proves to be void.

Inheritance rights may also trigger a challenge to the validity of a marriage. In Kansas, for example, the Kansas Supreme Court recently invalidated a marriage between a transsexual woman and her deceased husband, based on a challenge from the deceased husband’s son, who did not want the surviving transsexual spouse to inherit as a surviving spouse.⁴ The court refused to recognize the marriage despite the fact that the transsexual woman had lived most of her adult life as a woman, had undergone extensive medical treatment including genital reconstructive surgery, and had obtained a new birth certificate from her home state.

While other state courts are unlikely to follow the Kansas Supreme Court’s faulty logic, couples should protect themselves against this possibility as much

⁴ *In re Estate of Gardiner*, 42 P.3d 120 (Kan. 2002).

as possible by executing private partnership protection documents, such as wills.⁵

⁵ see **TRANSGENDERED PERSONS AND MARRIAGE: THE IMPORTANCE OF LEGAL PLANNING** by Shannon Minter, National Center for Lesbian Rights. The article is available at: <http://www.nclrights.org/publications/tgmarriage.htm>

2. Access to Social Services

Social service providers have a daunting task: provide effective services to large and diverse populations on annual budgets that are often smaller than what some corporations spend on office supplies. In that context, it is no wonder that some agencies fall short of meeting every challenge. One challenge that has proven particularly difficult is hiring and training staff members who are able to provide culturally competent services to transgender clients.

One in five survey respondents reported experiencing discrimination at a social service agency. Such discrimination may be perpetrated by an agency's staff and/or clients. Basic examples include: the failure to use a client's correct name and/or the appropriate pronoun; denial of services; harassment and disrespect; invasive and inappropriate inquiries; and denial of access to appropriate facilities.

For example, transgender people in sex-segregated residential facilities often experience difficulty in gaining access to the appropriate facility. Even when a residential facility may recognize their duty under San Francisco law to provide a client access to the facility that corresponds to their gender identity,⁶ they sometimes implement insulting grooming policies, require disclosure of private medical information, or fail to protect transgender clients from other residents.

For example, one residential mental health facility in San Francisco required a woman to disclose her transgender status to her roommate, based on the insulting and discriminatory rationale that the non-transgender roommate might choose to act differently in the shared room once she knew that her roommate was a transgender person. Such a policy not only intrudes upon the medical privacy rights of the transgender client, it also perpetuates stereotypes about how non-transgender people relate to transgender people.

A more subtle form of discrimination occurs when a client, or potential client, requests services that are related to the person's gender identity from a non-LGBT agency. For instance, a transgender immigrant might go to an immigration services agency to get information about how to change their name on their green card. Too often, the person is given inaccurate information about name change procedures in general or automatically referred to an LGBT service provider because the agency feels uncomfortable dealing with transgender legal issues.

Clients can also receive similar treatment when they go to an LGBT-agency with questions that are not necessarily directly related to sexual orientation or

⁶ **Compliance Guidelines to Prohibit Gender Identity Discrimination**, City and County of San Francisco, section IV(D). The guidelines are available at: www.sfgov.org/site/sfhumanrights_page.asp?id=6274

gender identity issues, or that are perceived not to be directly related. Some LGBT agencies understand their mission to be narrowly limited to sexual orientation and gender identity issues and may be unwilling to address issues they perceive to fall outside of those limits. Or while they want to provide services, they may give incorrect information due to unfamiliarity with the topic or be unable to provide services in a culturally competent manner.

However, amidst all of the data on discrimination, it is important to highlight the work of agencies and organizations in San Francisco that are doing a good job of not discriminating against transgender clients. While this list is certainly not comprehensive, it gives a snapshot of agencies that are trying to do the right thing. Many agencies with transgender specific programs are health services agencies, including, for example: the Tenderloin AIDS Resource Center, the Tom Waddell Clinic, Asian Pacific Islander Wellness Center, the Stop AIDS Project, Proyecto ContraSIDA por Vida, Instituto Familiar de la Raza, UCSF's Center for AIDS Prevention Studies, AIDS Project East Bay, Dimensions Clinic, and the St. James Infirmary.

Other non-profits who have shown a dedication to effective service for transgender clients include, among others: the SAGE Project, the Ark of Refuge Ministries, Glide Memorial Church, Community United Against Violence, The Horizons Foundation, the Gay Straight Alliance Network, the Legal Aid Society-Employment Law Center, Bay Area Legal Aid's Community Health Advocacy Project, Legal Services for Children, Walden House, and the San Francisco Human Rights Commission.

3. Child Custody

Six percent of respondents reported discrimination in obtaining or maintaining custody or contact with a child. While this is a relatively low percentage of respondents, it is likely to be higher than the rate in the U.S. population as a whole. A transgender person's existing parental rights can be challenged in a number of different circumstances. Transgender people also face widespread discrimination in creating parental rights through adoption and contact with children through foster care.

Perhaps because of the National Center for Lesbian Rights' reputation as a leading advocate for LGBT family rights, NCLR has been in contact with numerous people who are experiencing difficulty in maintaining or establishing parental rights. Difficulties oftentimes surface when a relationship or marriage is being dissolved. For someone who is transitioning at the time of the dissolution, a divorce can be a nightmare because their ex-spouse will sometimes use the person's gender identity against them in court. Under California law, courts are prohibited from basing custody decisions on issues that have no direct bearing on a person's ability to be a good parent. Nonetheless, many courts are unfamiliar with transgender issues and may erroneously assume that being transgender is a negative characteristic or that having a transgender parent is harmful to children.

For instance, one woman in the Central Valley has been fighting to increase visitation with her son for four years. When she and her ex-spouse divorced, the woman had just begun to transition. Fearing that her ex-spouse would make her transition public, she agreed to a temporary custody agreement that allowed her very restricted, supervised visitation. Since then, she has petitioned the court to order permanent visitation that is less restrictive and unsupervised. Her spouse has opposed these modifications on the grounds related to the woman's gender identity. While several child welfare and mental health professionals have supported the woman's petition, the court has thus far not issued a decision.

In other cases, adoptions by one spouse of the other spouse's child or children can be challenged when a marriage dissolves. This most often happens when the couple entered into marriage after one of the partners transitioned. The other partner then challenges the validity of the adoption by challenging the validity of the marriage (see above ability to marry section).

One such case in Florida produced a multi-week trial during which medical experts and the judge grilled the father, an NCLR client, about the most private details of his anatomy and his sexual relationship with his ex-wife. In February of 2003, the judge found the transgender father to be male and a legal parent.

In recognition, he was awarded joint custody of his two children.⁷ While current California law would strongly protect a similarly situated person in this state, the financial cost of fighting such a challenge can be devastating. Conservatively, the attorney's fees in the Florida case will run over \$100,000.

Finally, transgender people who are attempting to become adoptive or foster parents face discrimination from public and private adoption and foster care agencies. One such couple in San Francisco attended a meeting that was marketed to LGBT people considering becoming foster parents. However, the meeting contained no actual content on transgender people and foster care. When the couple asked a question about their ability to become foster parents, one of the presenters told them she didn't even think it was possible. This obviously erroneous statement illustrates the prevalence of misinformation on this topic. Fortunately, California Assemblymember Judy Chu has introduced legislation to protect children and caregivers in the foster care system from gender-identity based discrimination.⁸

⁷ *Kantaras v. Kantaras*, Circuit Court of Pasco County Florida, case #98-5375CA, February 2003. The full decision is available at: www.transgenderlaw.org/cases/index.htm#marriage.

⁸ AB 458 "The Foster Care Anti-Discrimination Act of 2003."

4. Employment

Nearly one in every two respondents reported that they had experienced discrimination in employment. Other data from the survey highlights the consequences of conscious or institutional employment discrimination. For instance, 64% of respondents make less than \$25,000 a year and a full 79% of respondents make less than \$50,000. Over 40% lack health insurance and almost 20% do not have stable housing. The bottom line is that employment discrimination disenfranchises transgender people from U.S. society.

One of the likely reasons that so many respondents have reported suffering discrimination in the workplace is the overwhelming number of ways workplace discrimination can occur. Anti-transgender bias can affect a person's ability to be hired, promoted, or offered training opportunities. It can also lead to termination. It can affect the way a person is allowed to dress, the work they are assigned, the facilities they are allowed to access (bathrooms, locker rooms, etc.), the amount of customer contact they are permitted, and their ability to integrate into the work place. In addition, mistreatment, which can take the form of derisive language, intentional improper use of pronouns and names, and abusive treatment, can quickly rise to the level of unlawful harassment when it is pervasive and severe.

Endless anecdotes exist of people who have gotten excellent responses to their resumes or initial phone interviews from potential employers only to have the interest dry up once they meet a company representative. This is true whether the person has "come out" as transgender or is just suspected of being transgender. Other times, if the interest survives an interview, applicants are concerned that a routine check of their prior work experience or government identification records will reveal their transgender status. In fact, the very anxiety of being discovered to be transgender in a new work environment has led any number of people to delay or terminate a job search. One survey respondent wrote, in the margins of her survey, "I can only look for work in the places or agencies where transgender people already are."

Maintaining a job once a person's transgender status becomes known can be equally challenging. A person's gender identity can become known because the employee "comes out," transitions on the job, or is "outed" by co-workers or community members. Some employees are fired on the spot when this happens by employers who feel immune from legal liability. Others find their work shifts shortened, their advancement slowed or halted, and/or their duties changed.

This is especially true of people whose position requires customer contact. Employers, who profess to be supportive themselves, will often perceive their customers as unable to cope with interacting with a transgender sales person or service representative. In the case of a person who has transitioned on the

job, employers can be particularly reluctant to allow them to continue contact with client accounts they had serviced prior to their transition.

Harassment is also rampant. One woman came to us recently after she began having trouble with co-workers in San Francisco. People she had worked with for fifteen years as a man were shunning her once she transitioned. They would refuse to call her by her new name or to use “she” when referring to her. In response, she withdrew from the active social environment of the workplace and began eating lunch by herself in a lunch room on another floor. While her employer acknowledged her right to use the women’s restroom, they did not take the steps necessary to protect her access to it. Often times, the very act of utilizing the women’s restroom provoked derisive comments and physical threats. To avoid these confrontations, she has taken to using the restrooms at a nearby fast food restaurant instead of restrooms at her worksite.

Work is vital to most people’s experiences in U.S. culture. It is the way that most people in the U.S. are able to provide food and housing for themselves. It is also one of the main ways we participate in society. In addition to the economic consequences of employment discrimination, many people have testified to the emotional and psychological toll of unemployment or underemployment.

One woman in particular stands out. She is a teacher who transitioned in the Bay Area in the late ‘90s. Since transitioning, she has not been able to secure a full-time teaching contract in any of the several school districts to which she has applied. Needing work, she recently applied to an entry-level federal job. After two days and multiple hours of interviews and screening, she was turned down for the position immediately after she disclosed her transgender status on a comprehensive medical questionnaire. During one discussion, almost in tears, she said, “I know I have skills. I know I can do a good job. But all of this rejection has got me turned around and I am getting to the point where I’m starting to believe that I’m as worthless as these people think I am.”

Amid all of this, however, are stories of employers doing the right thing.⁹ One transgender man tells the story of coming out to his Bay Area employer’s human resources manager in the mid-90s. Her response was to offer him as much support as necessary to insure a bias-free work environment. At one point, a non-transgender employee complained about the transgender employee’s use of the men’s restroom. The human resources manager informed the non-transgender employee that the transgender employee had the right to full access to the men’s room. She further told him that if he didn’t want to use the same restroom, the company would set up a portable toilet in the parking lot for his use.

⁹ For a good example, see Jamison Green’s article “Bathroom Conversation” at: www.nclrights.org/publications/bathroom.htm.

5. Health Care

Nearly one-third of respondents reported experiencing discrimination in obtaining health care. Almost half of them identified it as one of the three areas of discrimination they consider most important. Access to competent and affordable health care has long been a concern in the transgender community. Yet, people continue to face barriers to receiving good health care both outside and inside of a doctor's office.

As our survey demonstrates, many people do not even have basic health insurance. Of those that do, very few are covered for medical procedures related to their transition. Furthermore, even people who have basic coverage can have a difficult time finding a doctor who is familiar and comfortable providing primary health care services to a transgender person.

Discrimination in access to health care falls into a number of different categories. People are denied medical care or prevented from purchasing health insurance; denied coverage for health needs that may be tangentially or collaterally related to transition procedures; and, denied coverage for transition related procedures due to explicit exclusion language or common practice. For example, a man in Southern California had his application for an individual insurance policy recently turned down by a health insurance company. The stated reason for such a denial was that the man had used hormones to treat Gender Identity Disorder in the past.

Other examples include men who are unable to get coverage for gynecological treatment because such treatment is "only available to women" and women who can not get prostate exams because "only men have prostates." *Southern Comfort*, a 1998 documentary film, tells the story of a man in Georgia who was unable to get treatment for ovarian cancer and eventually died untreated. In addition, many health insurance plans, HMO plans, and employee benefits plans will deny coverage of hormones, surgery, and other procedures that are a part of a person's transition. They do so either because the person's insurance policy contains an explicit exclusion for such procedures if they are related to transition or because they will deny individual claims as experimental, investigative, or not medically necessary.

Bright spots do exist, however. In 2001, the City of San Francisco removed all such exclusions in the health insurance policies of city employees. This landmark decision drew loud criticism about the cost associated with doing so.¹⁰ However, since its implementation, San Francisco city officials have been inundated with calls from other government and private employers from

¹⁰ **Paying for Transgender Surgery Sex change in the city: San Francisco has more pressing needs** Arthur Evans, San Francisco Chronicle, April 29, 2001; **Paying for Transgender Surgery Sex change in the city: Are nose jobs next?** Tony Hall San Francisco Chronicle, April 29, 2001; **Sex Change In the City**, Debra J. Saunders, San Francisco Chronicle, March 18, 2001

around the country who want to know how the policy is working and the concerns about the costs of the new policy have so far proven unfounded.

In addition, Medi-Cal, California's Medicaid program has recently begun to approve treatment requests for surgical procedures related to transitioning. This change in policy comes on the heels of a state court decision, *Doe v. Bonta*, in which a superior court judge followed prior cases dating back to the seventies prohibiting Medi-Cal from categorically denying such requests.¹¹ While individual requests for coverage of hormones and surgery may still be denied on occasion, Medi-Cal has issued new provider guidelines giving surgeons reimbursement information for performing transition related procedures.¹²

However, getting approved for coverage is only the first step in the search for health care. Medi-Cal clients who qualify for coverage are often left without a Medi-Cal approved surgeon to provide the services. Similarly, even people who can acquire basic health coverage face a challenge in finding a health care provider who can competently provide services. It is not uncommon for transgender patients to be asked inappropriate questions about their anatomy when seeking services unrelated to their transition. Unfortunately, inappropriate questions do not end there. One man, who had made an appointment simply to refill his hormone prescription, found himself answering questions from two nurses about his sex life. Even if a particular doctor has the cultural competency to provide good services, no guarantee exists that the doctor's staff and business partners share this competency.

Again, there are bright spots. Three San Francisco health clinics for low-income patients stand out as models of appropriate service: the Tom Waddell Clinic, Dimensions Clinic, and the St. James Infirmary. Other city, non-profit, and private health care providers have made similar strides in providing courteous and appropriate services to their transgender clients.

¹¹ *Jane Doe v. Diana M. Bonta*, Superior Court of the State of California in and for the County of Sacramento, case no. 00CS00954, January 29, 2001. (The judge ordered the California Department of Health Services to approve Jane Doe's request for transition related surgery, rescind department policy automatically denying coverage for transition related procedures, and to review all future transition related requests on a case-by-case basis.)

¹² see Medi-Cal Provider Manuals at <http://files.medi-cal.ca.gov/pubsdoco/pubsframe.asp>

6. Housing

Access to safe and affordable housing is a challenge for many people in San Francisco. With a tight rental market, real estate prices that push a majority of potential home owners out of the market, and the continuing gentrification of the Mission and the Tenderloin it is no wonder that 32% of respondents report having suffered discrimination in housing.

Housing discrimination can occur in a number of ways. Tenants can be denied housing. They can be discriminated against in the terms or conditions available to other tenants. They can be harassed by a landlord, the landlord's employees, and/or fellow tenants.

For example, one group of women, who were living in a residential hotel in the Tenderloin, were being charged more per night than other tenants and were being continuously threatened with eviction. The building manager and other building employees were also regularly coming into their rooms without permission and were monitoring their guests. Because these women are low income and have bad credit it is difficult for them to find a more stable and equitable living environment.

Another San Francisco resident found himself having to regularly call the police due to continual harassment from other tenants. When it became known that he was transgender, some of his downstairs neighbors began to verbally harass him. At times they would go so far as to stand outside his door, pound on it, and threaten to come in and beat him up. After four months of complaints to the property manager, he was offered a different apartment in a different building. As far as he knows, no action was ever taken against the people attacking him.

Potential home owners can also face discrimination. As mentioned in the "Ability to Marry" section above, couples with a valid marriage license can sometimes face difficulties in asserting their rights as a married couple. For instance, same sex couples with a valid marriage (as described above) often run into resistance in taking title to a house as a married couple. Since a married couple can obtain ownership with more rights than an unmarried couple, these couples have a financial interest in taking title to their house in the proper manner. However, many title companies have shown resistance to recognizing the validity of the couple's marriage and will only issue a title for them as an unmarried couple.

7. Immigration

The U.S. government has created no blanket prohibitions against transgender people visiting or immigrating to this country. In fact, for those people who come to the U.S. to escape gender identity based persecution in their country of origin (or fear such persecution upon return), asylum is an option. While the federal government has placed many barriers in the way of asylum applicants over the last decade, asylum has nonetheless been granted to a number of transgender refugees during that time.

In practice, however, transgender immigrants can face a number of challenges in immigrating to the U.S. One issue is the difficulty of obtaining immigration papers in the correct name and gender marker. These papers may include a passport from their home country, a Visa permitting them to enter and remain in the U.S., a permanent resident card, or naturalization papers. One flaw of the survey is that it failed to ask respondents whether they had been able to get immigration paperwork with the correct identity information. From anecdotal evidence, however, it is clear that many of these documents can be difficult to change.

For instance, a person who has already obtained a permanent resident card or naturalization papers can only change the name on those documents by providing the government with a court ordered name change. In contrast, a person who changes their name prior to becoming a citizen can change their name on their naturalization papers at the time of issuance simply by requesting that the correct name be used.

In the past, people have been able to change the gender marker on their permanent resident card with a letter from their health care provider. A letter from a surgeon is also all that was required for people who want to have the correct gender marker included on their naturalization paperwork prior to the time it is issued. However, recent anecdotes indicate that this practice may be ending. Recently, anyone who wants their correct gender marker to be reflected on their immigration documents has had to produce an appropriate court order.

Transgender people involved in bi-national relationships can face significant challenges to securing immigration rights for the non-U.S. partner. Traditionally, married bi-national couples are able to take advantage of U.S. immigration provisions that allow the non-U.S. partner to immigrate based on the marriage. While some couples where one partner is transgender have been able to do likewise, others have had the validity of their marriages scrutinized by INS officers.

Anecdotally, the government seems to be increasing the level of scrutiny applied to these marriages. While no official policy seems to exist, different

district offices have required a transgender person to “prove” they are legally their post-transition gender in the eyes of the federal government. Failure to do so is likely to lead to the denial of an immigration application.

Fortunately, San Francisco is lucky to have dedicated immigration advocates and attorneys who have spent considerable time on these issues. The Asylum Projects of both the Lawyers’ Committee for Civil Rights and the International Gay and Lesbian Human Rights Commission have been at the forefront of promoting the asylum rights of transgender people. Working in cooperation with private immigration attorneys -- including Sharon Dulberg of McVey Mullery & Dulberg, Robert Jobe of The Law Offices of Robert Jobe, and other dedicated practitioners -- both of these organizations have created a wealth of knowledge that any transgender person looking to apply for asylum should access. In addition, Dulberg is one of a handful of attorneys in the U.S. who has successfully represented a transgender person and their partner in applying for fiancé and marriage Visas.

8. Interactions with police officers

More than one in four respondents reported that they have suffered discrimination when interacting with police officers. One in three respondents ranked police harassment as a priority area. Unfortunately, this coincides with findings of San Francisco's Community United Against Violence (CUAV). In a 2000 report, CUAV documented the fact that police officers were the perpetrators of nearly 50% of the complaints of hate violence they received from transgender people.¹³

Police misconduct directed towards transgender communities can take a multitude of forms. Transgender women often find themselves the subject of intense scrutiny, especially in the Tenderloin and Mission neighborhoods. Many women tell stories of being stopped by police officers on the way to a club, bar, the grocery store, laundromat, or social service agency. These women are always questioned about their destination and reason for being on the street. They often find themselves illegally frisked including inappropriate touching of their genitalia so that the officer can "establish their true gender."

Just as often the officer or officers who have stopped them will loudly call them by their prior name. This is true even when a woman has identification listing her current name. Officers have also been known to loudly refer to the women they detain as "men" and utilize male pronouns when speaking about them. These acts are well known tools used to intimidate and control communities of transgender women. Each is a violation of established San Francisco Police Department policy and practice of respectful treatment. However, showing resistance to such treatment can sometimes lead to increased harassment escalating quickly to physical confrontations and pre-textual arrests.

Transgender people who call the police for assistance have also found themselves subjected to similar treatment. One common scenario is a police officer behaving respectfully to a transgender person requesting assistance until that officer is told, or "discovers," that the person is transgender. The police officer then expresses disappointment in being "lied" to by the transgender person about their "true" gender and often becomes suspicious of other facts that they have been told. This misplaced suspicion can lead to false arrests, abandonment of people in need of assistance, and the aforementioned harassment and abuse.

A common fear expressed by many members of transgender communities is being stopped by a police officer for a minor traffic violation at a time when their identification does not correspond to their gender expression. While

¹³ **Anti-Gay, Lesbian, Bisexual, and Transgender Violence Report**, National Coalition of Anti-Violence Programs, 2001. The full report is available on the web at: www.avp.org.

officers sometimes fail to notice such a discrepancy or do not react to it with bias, it can other times turn a routine stop into something much more harrowing.

For years, the San Francisco Police Department has been the target of public pressure intended to change they way they interact with transgender people. To its credit, the Department has taken some significant steps in this direction. In 1995, the Police Academy began to conduct half-day trainings for cadets on proper conduct with transgender residents. In 2002, the Department, along with other government and community agencies, staffed a task force whose mission it was to create policies improving relations between the SFPD and transgender communities. The recommendations of that task force are expected to be released in the summer of 2003. And in their two most recent reports, CUAU has found a marked decrease in the percentage of report of transgender hate violence in which the police were the perpetrators.¹⁴

¹⁴ The percentage of transgender people reporting law enforcement officers as the perpetrators of hate violence has dropped in NCAVP reports from both 2001 and 2002. Reports available at: www.avp.org.

9. Other

Several survey respondents took the time to write-in additional examples of discrimination. Four main areas stand out as not being covered by the existing categories: school, home, hate violence, and public transportation.

School

Regrettably, our survey failed to ask people about discrimination in educational environments. Again, from anecdotal evidence, it is clear that had this category been included in the survey a significant portion of respondents would have reported discrimination in it. Two surveys released in 2001, one from the Gay Lesbian Straight Educators Network¹⁵ and one from Human Rights Watch¹⁶ report high rates of harassment and discrimination against transgender and gender non-conforming students.

Such discrimination can come from a variety of sources. School administrators often fail to acknowledge a student's gender identity by refusing to issue them appropriate identification or allowing them access to appropriate facilities. Teachers regularly refuse to use a student's proper name and rarely prevent other students from committing gender based harassment. In addition to verbal harassment, other students often target transgender and gender non-conforming students for violence and social isolation.

Fortunately, California law currently offers explicit protection for students in public schools.¹⁷ The California Safe Schools Coalition (CSSC) plans to release a model policy directive on protecting transgender and gender non-conforming students in the summer of 2003. CSSC and other organizations around the state are assisting students, teachers, and administrators in utilizing state law to create bias-free school environments.

Home

Transgender students and other transgender people suffer harassment and violence in the home. Some parents subject their children to unethical and often times harmful "mental health" services.¹⁸ Sometimes other parents bribe,

¹⁵ **National School Climate Survey**, Gay, Lesbian, Straight Educators Network 2001. According to the report 74% of transgender youth reported being sexually harassed at school in the past year, and 90% of transgender youth reported feeling unsafe at school because of their gender expression.

¹⁶ **Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Students in U.S. Schools**, Human Rights Watch 2001. The report revealed that transgender and gender non-conforming students face relentless harassment and isolation from school environments.

¹⁷ California Education Code, section 200 (et seq.) codifying the Student Safety and Violence Prevention Act of 2000.

¹⁸ For an example of one such story, see **Listening to Gender Variant Children**, National Center for Lesbian Rights, Shannon Minter, 2002. Available at: www.nclrights.org/publications/gvchildren.htm.

cajole, and beat their children into expressing the gender they were assigned at birth. Siblings can also be a source of harassment for transgender people. For adult transgender people, partners who disapprove of or fail to understand their partner's transition may engage in abusive behaviors such as threatening to cut off access to children, exposing their partner's gender identity to the outside community, or committing physical violence. Equally abusive are partners who utilize society's discrimination against their transgender partner to exert financial or emotional control.

Prevention of domestic violence continues to be a major concern for organizations throughout the country. Incorporation of information about violence and harassment based on gender identity bias should be incorporated into those efforts. CUAV is a model for how to incorporate gender identity issues into anti-violence programs.¹⁹

In addition, many families are able to deal well with issues of gender identity. Increasingly, parents of transgender or gender questioning children are providing the support their children need to express their true gender.²⁰ It is also not uncommon for married couples to stay together through transition or to separate in a healthy and respectful manner.

Hate Violence

Hate crimes, whether they take the form of crude comments, transphobic and homophobic slurs, or physical violence, are committed against transgender people at an alarming rate. Remembering Our Dead, an advocacy organization, documented 24 bias motivated murders of transgender people in a twelve month period.²¹ In addition, transgender people experience threats and violence for using gender appropriate restrooms and other sex segregated facilities as well as in their neighborhood and place of worship.

California's hate crimes enhancement statute was the first state-wide law in California to explicitly include a broad definition of gender.²² It is currently being used in the prosecution of three men for the 2002 murder of a Bay Area transgender youth, Gwen Araujo.²³

Public Transportation

One common site for gender identity harassment is public transportation. A small number of respondents specifically mentioned public transportation as a

¹⁹ CUAV can be reached through their website (www.cuav.org) or at (415) 777-5500.

²⁰ *Id.* at 15.

²¹ See in general: www.rememberingourdead.org

²² California Penal Code section 422.6.

²³ **Chilling phone call in teen killing Defendant's girlfriend testifies at hearing in transgender case**, Kelly St. John, San Francisco Chronicle, January 30, 2003.

place where they are subjected to verbal insults and threats. In fact, two of these respondents identified public transportation employees as the perpetrators of some of this bias. Local and state laws clearly prohibit such treatment.

10. Prison and Jail

Nearly one in seven participants reported being discriminated against in jail or prison. This statistic is startling when you realize that this means that at least 14% of respondents have been incarcerated. This percentage alone is double the average incarceration rate for people in the country as a whole.²⁴

While incarcerated, transgender inmates and prisoners face many challenges in addition to those faced by non-transgender inmates and prisoners. Almost every aspect of life in a penal institution is affected by a person's gender identity. The most obvious of these is how a person is classified for purposes of housing. From all available evidence every penal institution in the U.S. officially determines an inmate's gender for purposes of housing based on that person's genitalia. This is certainly true for the San Francisco County Jail and the California Department of Corrections.

This means that someone who identifies as a woman, is known as a woman by her friends and family, exists in society as a woman (including having changed some of her identity documents to female) will be housed with men simply because her genitalia is identified as male. Not only is she going to be housed with men, sometimes she is misclassified as male in other ways as well. This means that she is often denied access to make-up and certain types of clothing (such as a bra), forced to follow male grooming standards (which often require men to keep their hair shorter than women), and referred to with male pronouns.

Some penal institutions will house transgender women in "protected" housing. This can mean anything from a cell block or pod for "vulnerable men" to administrative segregation. Inmates and prisoners in "vulnerable" housing can sometimes be denied basic privileges and work opportunities. Administrative segregation is a classification usually reserved for someone who is a danger to other inmates, staff, or themselves. A transgender person who is locked in there for her "own protection" is denied access to all but the most basic of privileges and may only get out of her cell for two or three hours a day.

In addition to housing issues, transgender inmates and prisoners are often provided with inadequate health care. While this is a problem throughout many penal institutions, transgender people face unique health care challenges. Obtaining access to hormones is one of the most persistent challenges a transgender inmate can face. Inmates or prisoners have suffered medical and emotional complications from being cut-off from hormones. This is most commonly the outcome for inmates who had been self prescribing their hormones and were therefore unable to produce a doctor's prescription, as many penal institutions require.

²⁴ The American Prison System, Peter G. Herman, Editor, H.W. Wilson Company, NY, 2001.

In addition, even when transgender prisoners are able to overcome these barriers and receive hormone therapy most jail and prison medical staff has not received basic training in the provision of hormones. Thus, while not all transgender prisoners and inmates utilize hormones for their transition, those that do run a risk of being on the receiving end of “trial and error” prescriptions.

However, San Francisco County Jail has been a model for other facilities in providing inmates access to hormones. One reason is the close cooperation between public health officials from the Jail Health Services and the Tom Waddell Clinic, both agencies of the San Francisco Department of Public Health. The professionals at Tom Waddell have been at the forefront of providing health care to low-income transgender people for years. Their expertise has helped Jail Health Services provide increasingly competent services.

11. Public Accommodation

While more than one in every three respondents reported experiencing discrimination in a place of public accommodation, just over one of every five respondents ranked public accommodation discrimination as a priority area. It is difficult to determine why a form of discrimination experienced by so many people was not ranked as a higher priority. It may be that while public accommodation discrimination is a common experience, preventing it isn't viewed as integral to survival.

Discrimination in places of public accommodation can happen in many different ways. One of the most common is denial of access to gender specific facilities. Bathrooms are one such facility. Because the majority of public bathrooms are designated male or female, access to them can be a constant issue for some transgender people.

Accessing the appropriate restroom can subject transgender people to serious harassment and abuse. One woman was prevented access to the women's restroom in a San Francisco fast food restaurant because a security guard did not think she belonged there. When the woman assured him that she had the right to use the women's restroom, the security guard became abusive, eventually removing her from the restaurant. Fear of such altercations with security guards, police, or other patrons is an often cited reason for avoiding use of public restrooms in general.

Furthermore, for transgender people who do not identify as either male or female the simple fact of having to choose one of the two restrooms can be anxiety producing. One reason is the frequency with which their choice is challenged by other patrons. This is also true of women who do not have stereotypically female gender expressions. Many lesbians, especially, find themselves challenged in women's restrooms.

Gaining access to sex designated dressing rooms can be similarly difficult. In retail stores that still segregate dressing areas, transgender people may find themselves forced to "prove" or defend their gender. This is sometimes combined with increased security scrutiny. Some stores are predisposed to view transgender women as likely shoplifters and will therefore refuse them access to the dressing room based on this belief. Often times transgender men face similar problems when purchasing "male identified" clothing, such as suits. Men who have been trying to buy suits sometimes find themselves being treated poorly by the sales staff -- including being directed to suits tailored to women or in more "feminine" colors.

Finally, access to certain bars or nightclubs has been difficult for some transgender people. For example, a bar in California's Central Valley is well known for harassing the transgender women who frequent it. The women are

harassed for violating the bar's dress code even when they are dressed similarly to other women. And, again, they are denied access to the correct restroom. However, because it is one of the few dance clubs in a small town, many of the transgender patrons are reluctant to file harassment claims due to the retaliation they believe is sure to follow.

B. Respondent Priorities

1. Respondent pool as a whole

In addition to providing information about their experiences with discrimination, survey participants were asked to identify their three priority areas. The goal in doing so was to begin to gather data on community priorities in order to make better resource allocation decisions. While it is not surprising that employment discrimination was the priority most often selected, analysis of other categories differs from what one might expect based solely on self-reported experiences of discrimination.

For instance, while discrimination in health care was reported less frequently than discrimination in both public accommodation and housing, it was listed as a priority more often than either. The same is true of police harassment. And while only 9% of respondents reported actual discrimination in their ability to marry, 30% ranked it as one of the three most important areas. This is equal to the number of people who ranked housing as a priority area and higher than those who ranked public accommodation.

Collecting data of this sort is incredibly helpful in determining how and when to move forward on certain issues. Planning resource allocation simply from anecdotal evidence or by tracking client contacts can sometimes overvalue issues that happen frequently but aren't seen to be a big priority or undervalue issues that happen less often, but have large consequences. This section is not meant to identify the only priorities for transgender activists or even to definitively identify the main ones. Instead it is offered as a part of a larger conversation about the best way to move transgender civil rights forward.

More information about what percentage of the pool selected which priorities is available in Appendix B.

2. Analyzed by demographics

To better understand community priorities, the priority areas have been analyzed by demographic group. Overall, the priorities of each demographic group are similar to those of the pool as a whole. Employment was ranked as the first or second priority area for each demographic group. Health Care was ranked as the first or second priority area in all but two groups. And Police Harassment was ranked as a second, third, or fourth priority by all groups.

However, some differences did surface. Immigration and Prison/Jail were ranked significantly higher by one individual group each than by the respondent pool as a whole. While only 10% of the pool as a whole ranked immigration as a priority area, 30% of respondents identifying as Latina/Latino/Hispanic selected it. And while only 8% of the pool as a whole

selected Prison and Jail discrimination as a priority area, 28% of respondents identifying as African-American selected it.

People who identify as 3rd Gender, Gender Queer, and/or Gender Variant were more likely than anyone else to rank Public Accommodation as a priority (45%). And people who earn between \$25,000 and \$50,000 were the most likely to select Ability to Marry as a priority (58%).

Analyzing the priority areas by demographic category reveals not only the differences between different transgender communities, but also the similarities. Because of the complex relationship between characteristics like race, class, national origin, and gender it is logical to expect some degree of difference between the demographic categories. However, it is important to recognize the frequency with which the priorities are roughly similar across the board. And while communities in the real world rarely fall so neatly into categories separating the data apart via such blunt generalizations is still useful in understanding that recognizing diversity does not always lead to splitting priorities.

The top five priority areas for each demographic group are detailed in Appendix C.

C. Health and Wellbeing

In addition to gathering data on how many people have experienced certain kinds of discrimination, the survey collected information on issues related to respondents' health and wellbeing. Because so little data exists about transgender people and community needs, the information in this section is particularly helpful in understanding some of the consequences of discrimination and the need for laws that reflect the actual experiences of transgender people.

1. Stable Housing

A tight local housing market coupled with high incidents of housing and employment discrimination has left one in five respondents without stable housing. Even with San Francisco's low vacancy rate, the percentage of respondents who lack stable housing is disproportionate to the city's population as a whole.

Homelessness, and even the lack of confidence in the stability of housing, can exacerbate other issues for transgender people. Maintaining a health care regime and good health practices is difficult when you are unsure where you will be living on any given night. Securing or maintaining a job is nearly impossible when you lack a dependable address or have an erratic sleep schedule. Accessing social services, a time consuming endeavor in any situation, can become impractical if you spend a majority of your day looking for affordable housing or suffering from anxiety about your current housing situation. Each of these challenges has the potential to create or accelerate disenfranchisement on the part of the person lacking stable housing.

By looking at the population at a whole, it quickly becomes clear that certain groups within the transgender community are more likely to lack stable housing. For instance, people who are Latina/Latino/Hispanic face homelessness at almost twice the rate as the general population. People who are 3rd Gender/Gender Queer/Gender Nonconforming, male to female, and/or who earn less than \$25,000 a year face elevated rates of homeless or are more often at risk of homelessness. On the other hand, respondents who earn over \$25,000 a year almost universally have secure housing.

The full demographic breakdown for stability of housing is available in Appendix C.

2. Health Insurance Coverage

Nearly one half of survey respondents lack any kind of health insurance coverage. This is more than two times the percentage of people in California

who lacked health insurance in 2000.²⁵ More alarmingly, this statistic does not measure the percentage of respondents who have insurance, but who still must pay out of pocket for transition related procedures or procedures that are tangentially related to or exacerbated by transition.

Of the nearly 50% of respondents who do have insurance, anecdotal evidence reveals that only a very small percentage can use that coverage to pay for transition related procedures. And while basic health insurance coverage is important for all people in San Francisco, regardless of gender identity, members of the transgender community who utilize the services of health care professionals to assist in their transition are particularly in need of competent, affordable health care.

According to the survey results, some groups within the transgender community have a more difficult time obtaining basic health care coverage. Latina/Latino/Hispanic respondents were one and a half times more likely to be uninsured than the pool as a whole. And people earning less than \$25,000 were one and a quarter times more likely. It is worth noting, however, that even a small increase in annual income reduces the percentage of respondents without insurance from 55% to 21%. This is additional evidence for the need for increased enforcement of anti-discrimination laws in the workplace.

The full demographic breakdown for lack of health insurance coverage is available in Appendix C.

3. Transition Procedures

The survey included questions about medical treatment for a couple of reasons. First, little reliable data currently documents the types of procedures that are common in the transgender community. While much public policy is premised on the assumption that surgery is a part of every transgender person's transition, the survey responses show this to be false. Second, we wanted to be able to document, in some small way, the diverse paths that people take in their transitions.

One clear result from the survey is that different transgender people utilize varying amounts and types of medical care in expressing their gender identity. Many laws and policies relating to changing the gender designation on official documents assume some base level of shared medical experience; however, the survey results do not fully support that assumption. Even hormone therapy, which is often assumed to be part of everyone's transition, was used by only 3 of every 4 respondents. While this is obviously a significant portion of the pool,

²⁵ U.S. Census Bureau, "Health Insurance Coverage: 2000." Available at <http://www.census.gov/hhes/hlthins/hlthin00/hi00td.html>.

it is clearly not universal. In fact a full 7% of respondents have had no medical treatment at the time of the survey.

Based on this data, it is difficult to support any law or policy that attempts to set a “baseline” standard that a transgender person must meet before their gender identity is understood to be their legal gender. For instance, many states require a person to have had “sex reassignment” surgery in order to change their birth certificate. However no more than 15% of survey respondents can meet this standard.

To make matters worse, due to misconceptions and lack of information about current medical knowledge and practice relating to transgender people, some courts and agencies erroneously interpret “sex reassignment” surgery to refer only to genital reconstructive surgery. Since only 8% of respondents have had such surgery (here listed as “bottom surgery”), the inapplicability of such an interpretation to the actual lives of most survey respondents becomes clear. Any judge or agency employee who interprets “sex reassignment” surgery in this manner is therefore requiring some transgender people to choose between undergoing procedures that are not necessary or appropriate for that individual and living the rest of their lives with documentation that doesn’t reflect their true identity. Obviously, this is no real choice at all.

4. Identity Documents

The importance of having identity documents that correspond to a person’s true self is an easily understood desire. This is true not only because such documents validate a person’s existence in society, but because the outcome of having documents that are incongruous with a person’s expressed identity can be severe. As has been detailed elsewhere in this report, discrimination and hate violence are common in transgender communities. Having to “come out” as transgender every time a person needs to show a piece of identification or whenever an employer or landlord conducts a routine background check exposes a transgender person to unnecessary personal and financial risks.

It is not surprising that survey respondents were most likely to have changed their drivers license or state identification. In California, a person’s name and gender marker can be changed on these forms of identification based on a declaration from a person’s doctor.²⁶ The doctor does not need to disclose what forms of medical treatment the person has undergone as a part of transitioning in order to declare that the person is expressing their gender identity full-time. By allowing individuals, in conjunction with their health care providers, to determine the transition that is appropriate for them, the California Department of Motor Vehicles has created one of the most supportive and effective policies in the country.

²⁶ California Department of Motor Vehicles form DL-328.

At the opposite end of the spectrum is the percentage of people who have changed their birth certificates. Only 6% of respondents have done so. One reason for this is that people find less need to change their birth certificate due to the limited number of occasions in which a birth certificate must be produced. Another reason, however, is likely to be the difficulty of obtaining a new birth certificate in most states.

While it is fairly easy to change the name on a birth certificate it can be much more difficult (or in limited instances, impossible) to change the gender marker. While California has one of the more progressive statutes for changing the gender marker, even it requires an affidavit from a qualified surgeon who has performed a surgical procedure.²⁷

This means that anyone for whom surgery is not a part of their transition, for whom surgery is financial unattainable, or for whom surgery is medically unnecessary/unadvised is left without the ability to change the gender marker on their birth certificate. The legal consequences of this are, at this point, unclear. However, if a transgender person's gender is ever challenged in court, it is clear that being able to produce a birth certificate that lists a person's gender identity as their sex is a powerful piece of evidence.

²⁷ California Health and Safety Code section 103425 (et seq.)

III. RECOMMENDATIONS

The following recommendations were created as a means of addressing the challenges outlined in this report. Where possible, they take into account the decades of organizing and advocacy efforts that have already been undertaken by transgender communities and their allies in San Francisco. They are offered as a starting point for conversation, not a blueprint for success.

A. Transgender Communities and Allies

1. Understand the Law

San Francisco, California, and, in some cases, federal law prohibit much of the discrimination chronicled in this report. Understanding our rights to express our gender identity is the first step to asserting them. At the same time, it is vital to understand where we lack protection in order to advocate for additional protections.

2. File Complaints

Local, state, and federal agencies have been established to accept and, often times, investigate claims of discrimination in employment, housing, public accommodation, education, law enforcement, and health care. For many years, some of these agencies (many of which are listed in Appendix B), failed to properly serve transgender communities. Over the last five years, many of these agencies have made great progress in addressing this problem. And those that haven't need to be held accountable for not doing so.

Filing complaints is one of the best ways to create a record of actual claims of discrimination. While none of these forms of discrimination are easy to fight and no agency can guarantee satisfaction to every complainant, the simple act of documenting the problem serves a valuable purpose.

3. Become and Remain Active in the Political Process

Transgender communities and their allies can point to a number of victories in local and state political efforts in recent years. These and prior victories were accomplished largely through the efforts of committed volunteers. Such efforts are vital to overcoming many of the problems documented in this report. The time commitment necessary to play a role in ongoing and future efforts can vary greatly depending on your availability.

4. Recognize Similarities

One unexpected outcome of the legal needs assessment survey was the revelation of how different transgender communities share many of the

same basic concerns. In a population as diverse as the one that falls under the transgender umbrella, it is easy to see differences. And while this report acknowledges and celebrates many of those differences, it also reveals common challenges and desires. By acting on those shared priorities, without ignoring or dismissing those that are different, transgender communities can move forward together.

5. Push Community Groups to Become Involved in Transgender Issues

While many LGBT, civil rights, and social service agencies in California and around the country have begun to look more closely at incorporating the needs and concerns of transgender communities into their work, more progress needs to be made. Holding these groups accountable can often be like calling a friend to task. However, such accountability needs to be pushed in a constructive manner. One strategy is to encourage these organizations to hire and promote transgender staff members in order to insure that community members have a voice at the table.

B. Legal and Social Service Providers

1. Provide Appropriate Staff Trainings

As this report shows, one in five respondents faced discrimination in accessing social services. However, as is also clear a large number of transgender people are a part of a population that is often in need of legal and social services. We strongly recommend that all organizations create a policy on gender identity discrimination and train staff members to implement that policy. These policies should address many of the issues detailed in this report, including correct name and pronoun usage and access to sex segregated facilities and programs. The Transgender Law Center, as well as a number of other advocates around the state, is able to assist organizations with this process.

2. Identify and meet the needs of your transgender clients

Your transgender clients may have some specialized needs. Some of them may be clear from this report. You may have already discovered other issues or could discover them through surveys or focus groups. Understanding these unique needs will enable your organization to more fully serve your clients. Hiring and/or retaining transgender staff members is another step in implementing this recommendation. While no transgender person speaks for all transgender people, the presence of transgender people on staff is often crucial to creating a welcoming environment for transgender clients.

3. Recognize the diversity of the community

As our survey begins to demonstrate, the transgender community is really an overlap of many communities. Addressing issues like language access and institutional racism, sexism, and homophobia will not only

benefit your diverse transgender client base, but all of the clients you serve. Your organization will also benefit from better understanding the ways in which your policies or practices may alienate people whose gender identity is not strictly male or female. Recognizing these dynamics allows you not only to better serve these communities, but to improve your organization as a whole.

4. Recognize the similarities

At the same time that it is important to recognize the unique needs of transgender clients, it's important to keep those needs in perspective. Transgender clients are, for the most part, just like your other clients. The core concerns of your organization likely concern them as well. Therefore, don't assume that transgender clients are only interested in being a part of your organization's transgender related work. Often times, they are just as interested in the other efforts of your organization and should be encouraged to participate in them as well.

C. Local and State Lawmakers

1. Revise existing identity document laws and policies

Any law that requires a transgender person to undergo genital surgery before being legally recognized in their post-transition gender must be revised. A belief that a person's legal gender is premised on their genitalia is flawed. Such a belief is based on outdated stereotypes rather than current medical understanding. The overwhelming majority of survey respondents can not meet this standard; however, many of them are accepted in their post-transition gender by family, friends, co-workers, and society at large. State laws must be revised to better reflect the actual experiences of the people affected by them.

2. Clarify existing laws

In the creation of most laws, transgender people and their needs were never considered. Existing laws need to be clarified in order to clearly protect transgender people from discrimination, allow transgender people security in the creation of families, and provide access to competent and effective health care services.

3. Incorporate transgender people into the legislative process

Too often transgender voices are left out in the creation of laws and policies that affect their ability to express their gender identity. Community members should be at the forefront of efforts to make laws and policies more applicable to their lives.

4. Train government agency personnel in transgender cultural competency

Government employees come into regular contact with transgender people who need to be able to rely on them to be professional and respectful in fulfilling their duties. For instance, Department of Motor Vehicle employees are integral to a person's document change process. Training these employees in basic departmental policy concerning changing gender markers would go a long way towards making this process easier and less threatening.

5. Remove health care insurance exclusions for government employees

San Francisco is in the process of demonstrating that removing exclusions of transition related procedures from employee health plans is both affordable and attainable. Cities, counties, and the state need to lead the way in providing equal health benefits for all employees.

D. Funding Community

1. Educate program officers and decision makers on transgender issues

A number of foundations in California and around the country have begun to educate themselves on the needs and concerns of transgender people. However, too many foundations have not done so. Staff trainings in basic Transgender 101 as well as more in-depth analysis of legal, health, and social needs will allow foundation personnel and their decision makers to better understand how transgender people are, or should be, a part of their mission.

2. Hold grantees accountable

The foundation community and private donors are in a unique position to influence service providers and other non-profits on transgender issues. Strongly recommending that grantees educate themselves and their staff on transgender needs and concerns has the potential to significantly decrease the number of transgender people who experience discrimination in social service agencies.

IV. APPENDIX

Appendix A: Legal Needs Assessment Survey

The Transgender Law Project

A Project of the National Center for Lesbian Rights and Pride Law Fund

Transgender Discrimination Questionnaire

The following questionnaire was created with the goal of better understanding the legal needs of the transgender community in San Francisco. When answering the questions below, please do not worry about what legally constitutes discrimination. Instead, please make note of any incidents where you felt discriminated against based on your gender identity or perceived gender identity.

It is often hard to determine if discrimination is based on any one characteristic (race, gender, gender identity, sexual orientation, disability, etc) or a combination of the above. For the purposes of this survey, please note any instances where your gender identity or perceived gender identity may have played a factor in the discrimination.

1. What is your zip code? _____

2. What is your connection to San Francisco? (please check all that apply)

- 2a I live in San Francisco
- 2b I come to San Francisco at least once a month
- 2c I have very little or no connection to SF

3. Do you identify as transgender?

- 3a Yes
- 3b No
- 3c Not Sure

4. In which of the following areas have you suffered discrimination because you are perceived to be transgender?

- 4a Access to Social Services (denied gender-specific services, treated poorly by staff, etc.)
- 4b Child custody (denied custody, had visitation limited, denied adoption application, etc.)
- 4c Employment (hiring, firing, advancement, access to training, accommodation, etc.)
- 4d Health Care (insurance, Medi-Cal, inappropriate questions from doctor or nurse, substandard care, etc.)
- 4e Housing (rental, eviction, harassment, sale, loan, etc.)
- 4f Immigration (denied service by INS office or official, suffered abuse in your home country, etc.)
- 4g Interactions with police officers (verbal or physical harassment, inappropriate search, etc.)
- 4h Public Accommodation (retail store, restroom, locker room, restaurant, etc.)
- 4i Prison or Jail (verbal or physical harassment, inappropriate housing, denial of medical care, etc.)

4j Relationships (been denied a marriage license or had one challenged, denied partner or survivor benefits, etc.)

4k Other (please explain): _____

5. Of the areas of transgender discrimination, please check the THREE that are most important to you.

- | | |
|---|--|
| <input type="checkbox"/> 5a Access to Social Services | <input type="checkbox"/> 5g Other (as written above) |
| <input type="checkbox"/> 5b Child Custody | <input type="checkbox"/> 5h Police Harassment |
| <input type="checkbox"/> 5c Employment | <input type="checkbox"/> 5i Prison or Jail |
| <input type="checkbox"/> 5d Health Care | <input type="checkbox"/> 5j Public Accommodation |
| <input type="checkbox"/> 5e Housing | <input type="checkbox"/> 5k Relationships |
| <input type="checkbox"/> 5f Immigration | |

6. If you have been denied access to a gender appropriate bathroom and/or been harassed for using a gender appropriate bathroom, did it happen: (please check all that apply)

- | | |
|---|---|
| <input type="checkbox"/> 6a At work | <input type="checkbox"/> 6e At the office of a social service or non-profit |
| <input type="checkbox"/> 6b In a restaurant or store | <input type="checkbox"/> 6f In a club or bar |
| <input type="checkbox"/> 6c At a sporting or cultural event | <input type="checkbox"/> 6g I have never been denied bathroom access |
| <input type="checkbox"/> 6d In a government building | <input type="checkbox"/> 6h Other: _____ |

7. If you have received any medical treatment as a part of your transition, what kind have you received?

- | | |
|---|---|
| <input type="checkbox"/> 7a Bottom Surgery | <input type="checkbox"/> 7e Mental Health Services |
| <input type="checkbox"/> 7b Electrolysis | <input type="checkbox"/> 7f Top Surgery |
| <input type="checkbox"/> 7c Hormone Treatment | <input type="checkbox"/> 7g I have not received medical treatment |
| <input type="checkbox"/> 7d Hysterectomy | <input type="checkbox"/> 7h Other _____ |
-

8. Which documents have you had changed to reflect your transition? (please check all that apply)

- | | |
|---|---|
| <input type="checkbox"/> 8a Birth Certificate | <input type="checkbox"/> 8f Employment records |
| <input type="checkbox"/> 8b Court Ordered Gender Change | <input type="checkbox"/> 8g Passport |
| <input type="checkbox"/> 8c Court Ordered Name Change | <input type="checkbox"/> 8h School records |
| <input type="checkbox"/> 8d Credit Cards/ Bank Account | <input type="checkbox"/> 8i Social Security Records |
| <input type="checkbox"/> 8e Drivers License | <input type="checkbox"/> 8j None |
| | <input type="checkbox"/> 8k Other: _____ |

Demographic Information:

In order to insure that we are surveying a broad cross-section of San Francisco’s community, we are going to ask several personal questions. It will assist us greatly if you answer them to the best of your ability.

9. Ethnic Identity: (please check all that apply)

- 9a African-American/Black
- 9b Latina/Latino/Hispanic
- 9c Asian-American
- 9d European-American/White
- 9e Native-American
- 9f Pacific Islander
- 9g Other:_____

10. Income:

<input type="checkbox"/> 9a \$0-\$25,000	<input type="checkbox"/> 9c \$50,000 – \$100,000
<input type="checkbox"/> 9b \$25,000 – \$50,000	<input type="checkbox"/> 9d over \$100,000

11. Age _____

12. Which, if any, of the following terms have you used to describe yourself? (please check all that apply)

- 12a 3rd gender
- 12b Cross-dresser
- 12c Drag Queen/King
- 12d Effeminate male
- 12e FTM
- 12f Gender queer/gender variant
- 12g MTF
- 12h Masculine female
- 12i Transsexual
- 12j I haven’t used any of these terms to describe myself

13. Do you currently have stable housing?

- 13a Yes
- 13b No

14. Do you currently have some form of health insurance?

- 14a Yes
- 14b No

15. Today’s Date: _____ / _____ / 2002

Thank you very much for participating in this survey!

We encourage you to add any comments about the survey here:_____

Appendix B: Data Summary -- General

1. Forms of discrimination

a. In which of the following areas have you suffered discrimination because you were perceived to be transgender?

Response	Percentage		Response	Percentage
Employment	49%		Prison or Jail	14%
Public Accommodation	38%		Ability to Marry	09%
Housing	32%		Immigration	07%
Health Care	31%		Child custody	06%
Police Harassment	26%		Not sure	01%
Access to Social Services	20%		Other	12%

b. Of the areas of transgender discrimination, please check the THREE that are most important to you.

Rank	Response	Percentage		Rank	Response	Percentage
1	Employment	67%		7	Access to Social Services	14%
2	Health Care	46%		8	Child custody	11%
3	Police Harassment	35%		9	Immigration	10%
4 (tie)	Housing	30%		10	Prison or Jail	08%
4 (tie)	Ability to Marry	30%		11	Other	05%
6	Public Accommodation	21%				

c. If you have been denied access to a gender appropriate bathroom and/or been harassed for using a gender appropriate bathroom, did it happen:

Response	Percentage		Response	Percentage
In a restaurant or store	27%		At a sporting or cultural event	08%
At work	15%		Office of a social service or non-profit agency	07%
In a club or bar	15%		Other	05%
In a government building	13%			

2. Demographics of Respondents

a. Do you identify as transgender:

Response	Percentage		Response	Percentage
Yes	91%		Not sure	01%
No	06%			

b. Which, if any, of the following terms have you used to describe yourself? (please check all that apply)

Response	Percentage		Response	Percentage
Transsexual	50%		Effeminate male	07%
MTF	32%		Cross-dresser	07%
FTM	28%		Masculine female	06%
Gender queer/gender variant	21%		Drag Queen/King	05%
3 rd gender	10%		Other	05%
I haven't used any of these terms to describe myself	10%			

c. What is your ethnic identity: (please check all that apply)

Response	Percentage		Response	Percentage
European-American/White	57%		Native-American	05%
Latina/Latino/Hispanic	21%		Pacific Islander	0.5%
African-American/Black	12%		Other	03%
Asian-American	07%			

d. In what range does your income fall:

Response	Percentage		Response	Percentage
\$0-\$25,000	64%		\$50,001 - \$100,000	06%
\$25,000 - \$50,000	15%		Over \$100,000	04%

e. Age

Response	Percentage		Response	Percentage
24 to 35	30%		51 and over	11%
36 to 50	30%		Up to 23	08%

3. Health and Wellbeing Issues

a. Do you currently have stable housing?

Response	Percentage		Response	Percentage
Yes	74%		No	19%

b. Do you currently have some form of health insurance?

Response	Percentage		Response	Percentage
Yes	50%		No	43%

c. If you have received any medical treatment as a part of your transition, what kind have you received?

Response	Percentage		Response	Percentage
Hormone Treatment	75%		Bottom Surgery	08%
Mental Health Services	43%		I have not received medical treatment	07%
Electrolysis	28%		Hysterectomy	05%
Top Surgery	15%		Other	05%

d. Which documents have you had changed to reflect your transition? (please check all that apply)

Response	Percentage		Response	Percentage
Drivers License	48%		School records	15%
Social Security Records	43%		Passport	10%
Credit Cards/ Bank Account	39%		Court Ordered Gender Change	09%
None	30%		Birth Certificate	06%
Court Ordered Name Change	28%		Other	05%
Employment records	28%			

Appendix C: Select Data Summary by Demographic Category

1. Priority Areas

African-American/Black			Latina/Latino/Hispanic		
Rank	Response	Percentage	Rank	Response	Percentage
1	Employment	61%	1	Employment	67%
2	Housing	56%	2	Police Harassment	36%
3	Police Harassment	44%	3	Immigration	33%
4	Health Care	39%	4	Housing	30%
5 (tie)	Prison/Jail	28%	5 (tie)	Health Care	27%
5 (tie)	Public Accommodation	28%	5 (tie)	Ability to Marry	27%
5 (tie)	Ability to Marry	28%			

Asian-American/ Pacific Islander			European-American/White		
Rank	Response	Percentage	Rank	Response	Percentage
1 (tie)	Employment	67%	1	Employment	70%
1 (tie)	Health Care	67%	2	Health Care	38%
3	Police Harassment	42%	3 (tie)	Ability to Marry	34%
4	Public Accommodation	25%	3 (tie)	Police Harassment	34%
5	Housing	17%	5	Housing	31%

3rd gender/Gender queer/gender variant			Female to Male		
Rank	Response	Percentage	Rank	Response	Percentage
1	Health Care	66%	1	Health Care	70%
2	Employment	63%	2	Employment	59%
3	Police Harassment	45%	3	Ability to Marry	27%
4	Public Accommodation	34%	4	Police Harassment	25%
5	Ability to Marry	32%	5	Public Accommodation	20%

Male to Female			Transsexual		
Rank	Response	Percentage	Rank	Response	Percentage
1	Employment	86%	1	Employment	69%
2	Health Care	40%	2	Health Care	49%
3	Ability to Marry	34%	3	Police Harassment	37%
4	Police Harassment	32%	4	Housing	33%
5	Housing	28%	5	Ability to Marry	27%

\$0-\$25,000			\$25,001 - \$50,000		
Rank	Response	Percentage	Rank	Response	Percentage
1	Employment	72%	1	Employment	63%
2	Health Care	52%	2	Ability to Marry	58%
3	Police Harassment	37%	3	Health Care	46%
4	Housing	34%	4	Police Harassment	33%
5	Ability to Marry	25%	5	Child Custody	29%

Over \$50,000		
Rank	Response	Percentage
1	Employment	63%
2	Health Care	56%
3 (tie)	Police Harassment	33%
3 (tie)	Public Accommodation	33%
3 (tie)	Relationships	33%

2. Do you currently have stable housing?

Demographic Group	Yes	No		Demographic Group	Yes	No
Overall Pool	74%	19%		Male to Female	74%	24%
African-American	83%	6%		Transsexual	85%	15%
Asian-American/ Pacific Islander	92%	8%		3 rd gender/gender queer/gender variant	76%	24%
European-American/White	76%	17%		\$0-25,000	69%	27%
Latina/Latino/Hispanic	61%	36%		\$25,001-50,000	83%	4%
Female to Male	86%	14%		Over \$50,000	88%	0%

3. Do you currently have some form of health insurance?

Demographic Group	Yes	No		Demographic Group	Yes	No
Overall Pool	50%	43%		Male to Female	48%	50%
African-American	50%	39%		3 rd gender/gender queer/gender variant	55%	45%
Asian-American/ Pacific Islander	67%	33%		Transsexual	59%	41%
European-American/White	58%	35%		\$0-25,000	41%	55%
Latina/Latino/Hispanic	33%	64%		\$25,001-50,000	67%	21%
Female to Male	64%	36%		Over \$50,000	81%	6%

Appendix D: Methodology

Between May and October of 2002, 155 people completed the three page anonymous survey. While the survey itself was only available in English, a Spanish speaking outreach consultant helped numerous Spanish speaking participants complete the survey. The surveys were administered in nearly two dozen locations throughout San Francisco.

Due to resource limitations, all survey participants were either seeking transgender related social services or a part of a transgender community group (including those people accessing TLP's legal services). This means that while the survey pool includes people from a wide-variety of backgrounds, it excludes those people who are completely removed from the organized transgender community. Another interesting demographic fact of the survey pool is that while almost 40% of San Francisco's population self-identifies as Asian Pacific Islander, only a little over 7% of survey respondents so identified. I attribute this disparity mostly to poor outreach on my part. The Transgender Law Center is working to increase connections with transgender people in the Asian and Pacific Islander communities.

The survey results were then entered into a custom FileMaker Pro database. All analysis was done via that FileMaker Pro tools. Anyone wanting access to the raw data files should contact Chris Daley at the Transgender Law Center.