

# UNDERSTANDING TRANSGENDER ISSUES

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# TERMINOLOGY

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- LGBTQI – Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex
- Sexual Orientation: Who a person is attracted to sexually
  - Lesbian, Gay, Bi-Sexual, Asexual
- Sex: Biological Characteristics
  - Intersex: mixed biological characteristics
- Gender Identity: A person's internal, psychological sense of being male, female, or other
  - Transgender, gender queer, non-binary

# TERMINOLOGY, CONT.

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- Transgender (or Trans) – Term for people whose gender identity and expression is different from those associated with their assigned sex at birth.
  - Not a verb - “transgendered” is viewed as disrespectful
  - “Transexuals” is an outdated term as it confuses gender with sex but is still used in some legal documents
  - Transgender IS NOT the same as transvestite, cross-dresser, or drag queen (these are about cloths and/or performance)
  - The term does not have anything to do with sexual orientation
- Cisgender – Term for people whose gender identity and expression is congruent with their sex (from “cis-” Latin prefix for “on the same side as”; an antonym of “trans-”).
- Gender Non-conforming/Genderqueer – Term used by some individuals who identify as neither entirely male nor entirely female.

# TERMINOLOGY, CONT.

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- Trans Man (or FTM) – Transgender individual who currently identifies as a man.
- Trans Woman (or MTF) – Transgender individual who currently identifies as a woman.
- Transition – The process of altering one's birth sex to match one's gender identity and expression.
  - THIS IS NOT A ONE-STEP PROCEDURE; it is a complex process of personal, medical, and legal steps taken over a period of time.
  - The exact steps vary from person to person, spiritual needs, financial resources, and physical needs.

# RESPECTING ONE ANOTHER

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- Using respectful terms helps courts and professionals avoid the appearance of bias against LGBTQ parties/children
- Allows parties/children to focus on the law and the facts, rather than the judge's or professional's personal beliefs or opinions
- Refer to transgender people by gender identity, rather than assigned birth sex
- If it's not clear how a person should be addressed, it's okay to ask in a respectful confidential manner



# VULNERABILITIES

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- Discrimination (Employment, Housing, Public Accommodations, Etc.)
- Bullying
- Suicide
- Substance Abuse
- Physical, sexual, and verbal abuse
- Homelessness and survival sex
- Lack of access to proper healthcare

WORLD PROFESSIONAL  
ASSOCIATION FOR  
TRANSGENDER HEALTH  
(WPATH) - HARRY  
BENJAMIN STANDARDS OF  
CARE

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[HTTPS://WPATH.ORG/](https://wpath.org/)



# POSITIVE VS. NEGATIVE OUTCOMES OF TRANSITION

- Doctors and psychologists have long found positive outcomes from smooth transition processes.
- Stunted transition can lead to extremely negative outcomes such as suicide attempts; self mutilation; drugs/alcohol; attention/connection seeking; and anti-social behaviors
- Proper transition can ameliorate or at least improve negative outcomes

# LEGAL NAME AND GENDER CHANGES

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- Utah Code Ann. § 26-2-11. Name or sex change -- Registration of court order and amendment of birth certificate.
  - “When a person born in this state has a name change or sex change approved by an order of a Utah district court or a court of competent jurisdiction of another state or a province of Canada, a certified copy of the order may be filed with the state registrar with an application form provided by the registrar.”
  - No specific surgery required – Should be left up to the medical and therapeutic professionals.
- Under Utah Code Ann. §§ 34A-5-102 and 57-21-2, “Gender identity has the meaning provided in the Diagnostic and Statistical Manual (DSM-5). A person's gender identity can be shown by providing evidence, including, but not limited to, medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person's core identity, and not being asserted for an improper purpose.”
- Current Utah Supreme Court Cases vs. Legislative Action

# ANTI- DISCRIMINATION (LEGISLATION)

- Employment and Housing
  - On March 11, 2015, the Governor of Utah signed Senate Bill 296 into law.
    - SB 296 prohibits discrimination based on sexual orientation and gender identity in employment and housing.
    - SB 296 applies to the State of Utah, the State's political subdivisions, and any "board, commission, department, institution, school district, trust, or agent" of the state or its subdivisions.
  - U.C.A. § 34A-5-102 and 57-21-2 - "Gender identity has the meaning provided in the Diagnostic and Statistical Manual (DSM-5). A person's gender identity can be shown by providing evidence, including, but not limited to, medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person's core identity, and not being asserted for an improper purpose."
- Public Accommodations, Healthcare, and Schools – Not Yet

# ANTI- DISCRIMINATION (THE COURTS)

- Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)
  - An employer cannot discriminate against a female worker for not being their brand of feminine
- Federal appellate courts are divided about whether discrimination based on gender identity is a form of discrimination based on sex.
  - *Smith v. City of Salem* (6th Cir. 2004): yes
  - *Etsitty v. UTA* (10th Cir. 2007): no
  - *Glenn v. Brumby* (11th Cir. 2011): yes
- The United States Supreme Court
  - Now considering three LGBT cases this term. The Equal Employment Opportunity Commission has said the 1964 act does guarantee the protections. But the Trump administration has taken the opposite position, saying that the landmark legislation that outlawed discrimination based on race, religion, national origin and, notably, **sex**, cannot fairly be read to apply to discrimination based on sexual orientation or transgender status.
    - Bostock – Fired after joining gay softball league (Leader in child welfare services)
    - Zarda – Fired after remarked about being gay to colleague (Sky Diving Instructor)
    - Stephens – Fired for transitioning – (Funeral Director)

# MILITARY SERVICE

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- July 26, 2017 Tweet: “After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military...”
- Up in the air right now - thousands of active duty service members are left in flux
- Reminiscent of don't ask don't tell where LGB service members had to hide their real lives for fear of losing their positions
- Leaves service members incredibly vulnerable to abuse and mistreatment that they cannot report

# PRIVACY – DISCRIMINATION & VIOLENCE

- Q Salt Lake – September 9, 2019
  - “a 29-year-old transgender woman [from Utah]...was brutally beaten after using a woman’s bathroom at an Oregon coast park near Newport.”
  - “The assailant, Fred Joseph Costanza, 37, of Blackfoot, Idaho, struck 10 blows which shattered her jaw in multiple places and fractured her skull.”
  - “He kept saying, ‘**Oh, you think you’re some kind of lady?**’” Lauren told The Oregonian/OregonLive. “Suddenly, he punched my face. He grabbed my hair.”
- National Center for transgender equality
  - Transgender people face extraordinary levels of physical and sexual violence, whether on the streets, at school or work, at home, or at the hands of government officials. More than one in four trans people has faced a bias-driven assault, and rates are higher for trans women and trans people of color.
- Human Rights Campaign
  - In six studies conducted between 1996 and 2006, 20 to 57 percent of transgender respondents said they experienced employment discrimination, including being fired, denied a promotion or harassed.

# PRIVACY

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- Leave it up to the individual of if, when, how to disclose
- Closed courtrooms upon request
- Careful well-crafted communications
  - Involve the person in discussions of what information should be shared, how, and when
- Private vs. Sealed Records



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