



# A TRANSGENDER STATE AGENDA

An Overview Of Policies For  
Governors And State Agencies

OCTOBER 2016



*In every state and territory, increasing numbers of transgender people are coming out and trying to live safe and productive lives. Too often, they face discrimination, harassment and violence, and accompanying unemployment, homelessness, and negative health outcomes. The following policies have the potential to dramatically improve people's lives, in addition to being simply matters of good government.*

High priority items are indicated in orange text.



## NON-DISCRIMINATION GENERALLY

- Sign an Executive Order banning discrimination against state employees because of their gender identity or expression and sexual orientation.
- Issue guidelines on gender transition that apply to state employees and ensure that each agency updates its own EEO policy.
- Sign an Executive Order prohibiting discrimination by government contractors against employees because of gender identity or expression and sexual orientation.
- For states with clearly transgender-inclusive non-discrimination laws, or favorable interpretations of sex discrimination laws, issue regulations or compliance guidelines implementing these laws. For example, employment rules typically explain that an employee has the right to dress and use facilities in accord with the employee's gender identity.
- Implement nondiscrimination policies and transgender guidelines for all city/county agencies that directly serve the public, especially social service agencies.
- Establish a Governor's Commission, State Commission, or Ombudsperson on LGBT Rights, LGBT Youth, and/or LGBT Elders, with the authority to investigate, issue recommendations, and work with state agencies to implement the policies described in this agenda.

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## ■ ADDRESSING EMPLOYMENT BEYOND WRITTEN NON-DISCRIMINATION POLICIES

- Ensure that job centers and job training programs are serving transgender people by providing annual cultural competency training for staff, as well as guidelines for respectful treatment of transgender job-seekers or trainees.
- Take specific action to combat transgender unemployment, such as by developing and/or funding programs like the Trans Economic Empowerment Initiative, supported by government funds in California, to help transgender people become job ready and gain employment.
- Train staff annually at human rights/ civil rights agencies that investigate discrimination complaints in such areas of employment, housing, access to public education, and public accommodations.
- For state employment applications, “ban the box” asking about criminal records on initial applications except in narrow circumstances. Transgender people are over-represented among those with criminal convictions for survival crimes and/or low level crimes.
- Develop a policy to ensure that state employees can update the gender in their personnel records and on employee ID badges without burdensome proof requirements.
- For state law enforcement and security officers, develop a policy that recognizes officers’ gender identity for purposes of gender-specific job duties, such as searches.
- For the 22 states with state OSHA programs, issue rules and/or guidance requiring that transgender people have access to restrooms consistent with their gender identity as a matter of health and safety.



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## ■ ADDRESSING HOUSING BEYOND WRITTEN NON-DISCRIMINATION POLICIES

- Ensure that homeless shelters receiving state funds have written policies concerning equal access for transgender people and receive yearly cultural competence training.
- Take specific action to combat transgender homelessness and the lack of safe shelter and other safety net services, such as developing or funding programs like the Trans Life Center in Illinois, which provides emergency housing and wrap-around services for transgender people facing homelessness and is supported in part by HIV-related government funding.
- Include transgender-related questions and/or gender options that allow people to self-identify as transgender in any homelessness census and other surveys relating to homelessness.

## HEALTH

- Implement Section 1557 of the Affordable Care Act that prohibits discrimination:
  - Remove any transgender health exclusion in state employee health care plans and replace it with affirmative, comprehensive coverage.
  - Remove any transgender health exclusion in the state Medicaid program or clarify existing program rules to ensure comprehensive coverage.
  - Prohibit transgender health exclusions in plans sold on the state exchange or any private plans sold in the state.
- Fund transgender-specific HIV, Hepatitis C, and STI prevention and treatment services and require all HIV-related/Hepatitis C/STI providers to be trained on transgender cultural competence, including those that work with non-English speaking and other minority communities.
- Fund transgender-specific suicide prevention/intervention programs.
- Fund transgender-specific health promotion/prevention programs and routine health screenings.
- Track attempted and completed suicides of transgender individuals, including transgender youth.
- Require transgender cultural competence training as part of continuing education for all health care providers, starting with EMT providers, emergency room staff, and suicide prevention/intervention providers.
- Require substance abuse treatment centers to adopt comprehensive nondiscrimination policies and guidelines for supporting transgender people, and institute annual transgender-inclusive cultural competence training.
- Ask transgender-related demographic questions in the Behavior Risk Factor Surveillance System survey conducted in the state.
- Include transgender people in communications about domestic violence and sexual assault awareness campaigns.
- Include transgender women in communications and policies concerning women and women's health issues.
- Require long-term care facilities, mental health care facilities (including those for youth), and aging services organizations to institute comprehensive nondiscrimination guidelines, including guidelines on the treatment of transgender patients or residents, and require annual cultural competence training for staff.
- Fund needle exchange programs and other harm-reduction services that transgender people disproportionately need.
- Provide condoms in state correctional facilities to prevent HIV transmission.



## ■ IDENTITY DOCUMENTS AND PRIVACY

- Implement driver's license policies to allow people to update their gender marker either based on their sworn statement, or a statement from a health or social service provider attesting to the person's gender identity.
- Modernize birth certificate policies so that a person can update the gender marker either based on their sworn statement, or a statement from a health or social service provider. Ensure that a new birth certificate is issued, with the old certificate sealed. (In about half of states this can be done without legislation.)
- Modernize name change procedures and rules, sometimes set by the judicial branch, to remove requirements that a person's name change be published in the newspaper, get rid of any bar to name changes for certain groups of people, or remove any other unduly burdensome procedures or restrictions.
- Develop a policy to ensure beneficiaries of social services can update the gender in their agency records without burdensome proof requirements.
- Eliminate matching of gender data between state agencies and the Social Security Administration, such as in state employment verification programs, state benefits programs, etc.
- Develop a policy to ensure that death certificates reflect the gender the person identified as when living, even if the person had not been able to update the gender on their birth certificate or driver's license, even if some family members are not supportive, and even if the person does not have a will that states a preference.
- Update the language on marriage licenses and birth certificates to be gender-neutral (spouse and spouse on marriage certificate, parent and parent on birth certificate).
- Provide driver's licenses to undocumented state residents.
- If the state has voter ID laws, develop a written policy clarifying that a voter's gender-related appearance or discrepancies between their gender expression and the gender marker or photo on their identification are not relevant to their eligibility to vote, and train poll workers accordingly.
- If the state has identification cards for voters because of a voter ID law, remove the unnecessary sex designation from the card.





## SCHOOLS AND YOUTH

- Issue statewide regulations or guidance to K-12 schools on equal opportunity and privacy for transgender students, using the authority granted under the state’s non-discrimination law that covers gender identity/expression or sex discrimination; regulations or guidance should cover the range of issues where transgender students face discrimination, including dress codes, access to facilities, use of preferred names and pronouns, and participation in extra-curricular activities.
- Require or recommend comprehensive anti-bullying policies for all K-12 schools, which specifically list sexual orientation and gender identity or expression as protected characteristics.
- Require school administrators and staff to be trained in transgender cultural competence.
- Require school counselors to have specific training regarding suicide prevention for transgender youth.
- Work with racial justice advocates to reform school discipline policies, such as limiting suspensions or expulsions on vague grounds such as “willful defiance.”
- Include transgender-related demographic questions in the Youth Risk Behavior Surveys conducted in the state.
- In surveys of young people, especially those related to at-risk youth regarding running away from home and homelessness, include questions related to transgender identity.
- Adopt nondiscrimination policies and transgender guidelines for the foster care and adoption services systems, and ensure agencies receive annual cultural competence training and are able to ensure that transgender youth are not placed in non-accepting homes.
- Recruit transgender prospective foster and adoptive parents and ensure they are not discriminated against.
- Develop a plan to combat youth homelessness and provide affirming shelter, health, and other services for transgender youth.
- Require child protection agencies to have staff training and policies on how to spot and dismiss child abuse reports against parents who affirm the gender of their child, and require staff to have training in transgender cultural competence more generally.
- Require that state universities and colleges enact comprehensive non-discrimination policies, including access to housing and facilities, and that university staff are trained annually on providing transgender cultural competent support for students.
- Develop scholastic athletic association rules that allow transgender students to play sports in the gender they identify as (in some states, the associations are independent of the government).
- Institute comprehensive sex education for use throughout the state that includes information about transgender people; drop abstinence-only-until-marriage programs.





## ■ CRIMINAL JUSTICE AND THE JUDICIAL SYSTEM

- Develop a policy covering respectful treatment of transgender people by all state law enforcement agencies, including appropriate search procedures, respectful communication, and prohibiting profiling based on transgender status, and train all law enforcement officers on the policy and cultural competence.
- Develop comprehensive policies dealing appropriately with transgender adults in the corrections system to ensure fair treatment as well as to reduce sexual assault (building on federal PREA standards), and provide training on these policies and on cultural competence. These comprehensive policies should include screening, housing by gender identity, prohibiting automatic or prolonged segregation, search procedures, privacy, access to appropriate clothing and grooming items, provision of all medically necessary health care, and staff training.
- Develop comprehensive policies dealing appropriately with transgender youth in the juvenile justice system (see above), with particular attention to the documented problem of youth being disciplined or arrested for self-expression or for self-defense in cases of abuse.
- Eliminate the use of long-term solitary confinement in corrections facilities (which disproportionately affects transgender prisoners), and eliminate any use of solitary confinement for minors or those with mental illness.
- Educate/train and develop appropriate policies in the rest of the criminal justice system, including for judges, prosecutors, district attorneys, victim/witness advocates, defense attorneys, and probation, parole, diversion, reentry and rehabilitation programs.
- De-prioritize prosecutions for non-violent drug and sex work offenses, and HIV-related offenses.
- Use any discretion available to send people to alternatives to detention and diversion programs, seek lower sentences, increase access to bail and pre-trial release, and use probation and parole as much as possible to reduce incarceration.
- End or limit participation of state agencies in immigration enforcement.
- Include transgender-related and/or gender options that allow people to self-identify as transgender when reporting or being surveyed as victims of crimes; provide gender identity-related hate crimes data to the FBI.
- Institute rules to prohibit discrimination in jury selection based on sexual orientation or gender identity or expression.





## OTHER ACTIONS

- Appoint or hire openly transgender people, especially trans people of color, to serve throughout state government.
- Develop policies and protocols for transgender non-discrimination in disaster management emergency services.
- Update state building codes to increase requirements for single-stall, accessible restrooms in new buildings and require that all single-user restrooms be gender-neutral.
- Institute policies and guidelines to require or encourage designating single-stall restrooms in state buildings as gender neutral/unisex.
- Modernize marriage licensing requirements so that a person is not required to provide proof of gender at application and modernize marriage certificate change policies so that a person can update their name and/or gender (after the marriage is performed) based on the person's sworn statement.
- Include transgender people in any gender equity analysis and programs.
- Issue a proclamation recognizing Transgender Day of Remembrance (November 20), in addition to Pride Month, Coming Out Day, and the Day of Silence.

**For assistance with any of these policies, contact NCTE's State Policy Counsel, Arli Christian, at [achristian@transequality.org](mailto:achristian@transequality.org) or 202-642-4542**

## REFORMS OFTEN REQUIRING STATE LEGISLATIVE ACTION

Governors and state agencies often do not have authority for certain needed policy changes. These policies typically require the state legislature to act:

- Passage of a non-discrimination law covering sexual orientation and gender identity that requires private entities (such as employers, housing providers, etc.) not to discriminate.
- Repeal of laws that target the homeless such as those against panhandling, eating in public, sleeping in public.
- Reduction of sentences for non-violent crimes, reforms of bail, parole and probation restrictions, and decriminalization of sex work and drug possession or sales.
- Modernization of the process of updating gender markers on birth certificates (occasionally requires legislative action).
- Elimination of the requirement that name changes are published in a newspaper.

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The following federal and local agendas are available at :

<http://www.transequality.org/issues/agendas>

*Blueprint for Equality: A Transgender Federal Agenda for the Next Presidential Administration and Congress*

*A Transgender Local Agenda: An Overview Of Policies For Cities And Counties*

