EXECUTIVE SUMMARY

Injustice at Every Turn

A Report of the National
Transgender Discrimination Survey

Lead authors in alphabetical order:
Jaime M. Grant, Ph.D.
Lisa A. Mottet, J.D.
Justin Tanis, D.Min.

with Jack Harrison
Jody L. Herman, Ph.D.
and Mara Keisling
EXECUTIVE SUMMARY

This study brings to light what is both patently obvious and far too often dismissed from the human rights agenda. Transgender and gender non-conforming people face injustice at every turn: in childhood homes, in school systems that promise to shelter and educate, in harsh and exclusionary workplaces, at the grocery store, the hotel front desk, in doctors' offices and emergency rooms, before judges and at the hands of landlords, police officers, health care workers and other service providers.

The National Gay and Lesbian Task Force and the National Center for Transgender Equality are grateful to each of the 6,450 transgender and gender non-conforming study participants who took the time and energy to answer questions about the depth and breadth of injustice in their lives. A diverse set of people, from all 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands, completed online or paper surveys. This tremendous gift has created the first 360-degree picture of discrimination against transgender and gender non-conforming people in the U.S. and provides critical data points for policymakers, community activists and legal advocates to confront the appalling realities documented here and press the case for equity and justice.

KEY FINDINGS

Hundreds of dramatic findings on the impact of anti-transgender bias are presented in this report. In many cases, a series of bias-related events lead to insurmountable challenges and devastating outcomes for study participants. Several meta-findings are worth noting from the outset:

- Discrimination was pervasive throughout the entire sample, yet the combination of anti-transgender bias and persistent, structural racism was especially devastating. People of color in general fare worse than white participants across the board, with African American transgender respondents faring far worse than all others in most areas examined.

- Respondents lived in extreme poverty. Our sample was nearly four times more likely to have a household income of less than $10,000/year compared to the general population.

- A staggering 41% of respondents reported attempting suicide compared to 1.6% of the general population, with rates rising for those who lost a job due to bias (55%), were harassed/bullied in school (51%), had low household income, or were the victim of physical assault (61%) or sexual assault (64%).

HARASSMENT AND DISCRIMINATION IN EDUCATION

- Those who expressed a transgender identity or gender non-conformity while in grades K-12 reported alarming rates of harassment (78%), physical assault (35%) and sexual violence (12%); harassment was so severe that it led almost one-sixth (15%) to leave a school in K-12 settings or in higher education.
- Respondents who have been harassed and abused by teachers in K-12 settings showed dramatically worse health and other outcomes than those who did not experience such abuse. Peer harassment and abuse also had highly damaging effects.

<table>
<thead>
<tr>
<th>Respondents Income by Mistreatment in School</th>
<th>General Population</th>
<th>No school mistreatment</th>
<th>Mistreated in school</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $10K</td>
<td>4%</td>
<td>12%</td>
<td>21%</td>
</tr>
<tr>
<td>$10K - under $20K</td>
<td>9%</td>
<td>11%</td>
<td>15%</td>
</tr>
<tr>
<td>$20K - under $50K</td>
<td>28%</td>
<td>31%</td>
<td>33%</td>
</tr>
<tr>
<td>$50K - under $100k</td>
<td>33%</td>
<td>30%</td>
<td>21%</td>
</tr>
<tr>
<td>$100k+</td>
<td>25%</td>
<td>16%</td>
<td>9%</td>
</tr>
</tbody>
</table>

EMPLOYMENT DISCRIMINATION AND ECONOMIC INSECURITY

- **Double the rate of unemployment:** Survey respondents experienced unemployment at twice the rate of the general population at the time of the survey,* with rates for people of color up to four times the national unemployment rate.
- **Widespread mistreatment at work:** Ninety percent (90%) of those surveyed reported experiencing harassment, mistreatment or discrimination on the job or took actions like hiding who they are to avoid it.
- Forty-seven percent (47%) said they had experienced an adverse job outcome, such as being fired, not hired or denied a promotion because of being transgender or gender non-conforming.
- **Over one-quarter (26%)** reported that they had lost a job due to being transgender or gender non-conforming and 50% were harassed.
- **Large majorities attempted to avoid discrimination by hiding their gender or gender transition (71%)** or delaying their gender transition (57%).
- **The vast majority (78%)** of those who transitioned from one gender to the other reported that they felt more comfortable at work and their job performance improved, despite high levels of mistreatment.
- Overall, 16% said they had been compelled to work in the underground economy for income (such as doing sex work or selling drugs).
- Respondents who were currently unemployed experienced debilitating negative outcomes, including nearly double the rate of working in the underground economy (such as doing sex work or selling drugs), twice the homelessness, 85% more incarceration, and more negative health outcomes, such as more than double the HIV infection rate and nearly double the rate of current drinking or drug misuse to cope with mistreatment, compared to those who were employed.
- Respondents who had lost a job due to bias also experienced ruinous consequences such as four times the rate of homelessness, 70% more current drinking or misuse of drugs to cope with mistreatment, 85% more incarceration, more than double the rate working in the underground economy, and more than double the HIV infection rate, compared to those who did not lose a job due to bias.

**Unemployment Rate By Race**

**Job Loss Due to Bias By Race**
HOUSING DISCRIMINATION AND HOMELESSNESS

- Respondents reported various forms of direct housing discrimination — **19% reported having been refused a home or apartment** and **11% reported being evicted because of their gender identity/expression**.
- **One-fifth (19%)** reported experiencing homelessness at some point in their lives because they were transgender or gender non-conforming; the majority of those trying to access a homeless shelter were harassed by shelter staff or residents (**55%**), **29%** were turned away altogether, and **22%** were sexually assaulted by residents or staff.
- **Almost 2% of respondents were currently homeless**, which is almost twice the rate of the general population (**1%**).†
- Respondents reported **less than half the national rate of home ownership**: **32%** reported owning their home compared to **67%** of the general population.¶
- Respondents who have experienced homelessness were highly vulnerable to mistreatment in public settings, police abuse and negative health outcomes.

DISCRIMINATION IN PUBLIC ACCOMMODATIONS

- Fifty-three percent (**53%**) of respondents reported being verbally harassed or disrespected in a place of public accommodation, including hotels, restaurants, buses, airports and government agencies.
- Respondents experienced widespread abuse in the public sector, and were often abused at the hands of “helping” professionals and government officials. **One fifth (22%) were denied equal treatment by a government agency or official**; **29%** reported police harassment or disrespect; and **12%** had been denied equal treatment or harassed by judges or court officials.

<table>
<thead>
<tr>
<th>Location</th>
<th>Denied Equal Treatment</th>
<th>Harassed or Disrespected</th>
<th>Physically Assaulted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Store</td>
<td>32%</td>
<td>37%</td>
<td>3%</td>
</tr>
<tr>
<td>Police Officer</td>
<td>20%</td>
<td>29%</td>
<td>6%</td>
</tr>
<tr>
<td>Doctor’s Office or Hospital</td>
<td>24%</td>
<td>25%</td>
<td>2%</td>
</tr>
<tr>
<td>Hotel or Restaurant</td>
<td>19%</td>
<td>25%</td>
<td>2%</td>
</tr>
<tr>
<td>Government Agency/Official</td>
<td>22%</td>
<td>22%</td>
<td>1%</td>
</tr>
<tr>
<td>Bus, Train, or Taxi</td>
<td>9%</td>
<td>22%</td>
<td>4%</td>
</tr>
<tr>
<td>Emergency Room</td>
<td>13%</td>
<td>16%</td>
<td>1%</td>
</tr>
<tr>
<td>Airplane or Airport Staff/TSA</td>
<td>11%</td>
<td>17%</td>
<td>1%</td>
</tr>
<tr>
<td>Judge or Court Official</td>
<td>12%</td>
<td>12%</td>
<td>1%</td>
</tr>
<tr>
<td>Mental Health Clinic</td>
<td>11%</td>
<td>12%</td>
<td>1%</td>
</tr>
<tr>
<td>Legal Services Clinic</td>
<td>8%</td>
<td>6%</td>
<td>1%</td>
</tr>
<tr>
<td>Ambulance or EMT</td>
<td>5%</td>
<td>7%</td>
<td>1%</td>
</tr>
<tr>
<td>Domestic Violence Shelter/Program</td>
<td>6%</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td>Rape Crisis Center</td>
<td>5%</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td>Drug Treatment Program</td>
<td>3%</td>
<td>4%</td>
<td>1%</td>
</tr>
</tbody>
</table>
BARRIERS TO RECEIVING UPDATED ID DOCUMENTS

- Of those who have transitioned gender, only one-fifth (21%) have been able to update all of their IDs and records with their new gender. One-third (33%) of those who had transitioned had updated none of their IDs/records.
- Only 59% reported updating the gender on their driver's license/state ID, meaning 41% live without ID that matches their gender identity.
- Forty percent (40%) of those who presented ID (when it was required in the ordinary course of life) that did not match their gender identity/expression reported being harassed, 3% reported being attacked or assaulted, and 15% reported being asked to leave.

Harassment and Violence When Presenting Incongruent Identity Documents

Harassment and Assault by Police Due to Bias by Race

ABUSE BY POLICE AND IN PRISON

- One-fifth (22%) of respondents who have interacted with police reported harassment by police, with much higher rates reported by people of color.
- Almost half of the respondents (46%) reported being uncomfortable seeking police assistance.
- Physical and sexual assault in jail/prison is a serious problem: 16% of respondents who had been to jail or prison reported being physically assaulted and 15% reported being sexually assaulted.

DISCRIMINATION IN HEALTH CARE AND POOR HEALTH OUTCOMES

- Health outcomes for all categories of respondents show the appalling effects of social and economic marginalization, including much higher rates of HIV infection, smoking, drug and alcohol use and suicide attempts than the general population.
- Refusal of care: 19% of our sample reported being refused medical care due to their transgender or gender non-conforming status, with even higher numbers among people of color in the survey.
- Uninformed doctors: 50% of the sample reported having to teach their medical providers about transgender care.
- High HIV rates: Respondents reported over four times the national average of HIV infection, with rates higher among transgender people of color.
- Postponed care: Survey participants reported that when they were sick or injured, many postponed medical care due to discrimination (28%) or inability to afford it (48%).

Suicide Attempt by Employment

Overall Sample Employed Unemployed Lost Job Due to Bias Worked in Underground Economy

41% 37% 51% 55% 80%
FAMILY ACCEPTANCE OF GREAT IMPORTANCE

- Forty-three percent (43%) maintained most of their family bonds, while 57% experienced significant family rejection.
- In the face of extensive institutional discrimination, family acceptance had a protective affect against many threats to well-being including health risks such as HIV infection and suicide. Families were more likely to remain together and provide support for transgender and gender non-conforming family members than stereotypes suggest.

Impact of Family Acceptance

<table>
<thead>
<tr>
<th>Behavior</th>
<th>Families who accepted</th>
<th>Families who rejected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experienced homelessness</td>
<td>9%</td>
<td>26%</td>
</tr>
<tr>
<td>Had been incarcerated</td>
<td>11%</td>
<td>39%</td>
</tr>
<tr>
<td>Did sex work or other underground work for income</td>
<td>11%</td>
<td>29%</td>
</tr>
<tr>
<td>Had attempted suicide</td>
<td>32%</td>
<td>51%</td>
</tr>
<tr>
<td>Are current smokers</td>
<td>27%</td>
<td>32%</td>
</tr>
<tr>
<td>Used drugs or alcohol to cope with mistreatment</td>
<td>19%</td>
<td>32%</td>
</tr>
</tbody>
</table>

RESILIENCE

Despite all of the harassment, mistreatment, discrimination and violence faced by respondents, study participants also demonstrated determination, resourcefulness and perseverance:

- Although the survey identified major structural barriers to obtaining health care, 76% of transgender respondents have been able to receive hormone therapy, indicating a determination to endure the abuse or search out sensitive medical providers.
- Despite high levels of harassment, bullying and violence in school, many respondents were able to obtain an education by returning to school. Although fewer 18 to 24-year-olds were currently in school compared to the general population, respondents returned to school in large numbers at later ages, with 22% of those aged 25-44 currently in school (compared to 7% of the general population).
- Over three-fourths (78%) reported feeling more comfortable at work and their performance improving after transitioning, despite reporting nearly the same rates of harassment at work as the overall sample.
- Of the 26% who reported losing a job due to bias, 58% reported being currently employed and of the 19% who reported facing housing discrimination in the form of a denial of a home/apartment, 94% reported being currently housed.
CUMULATIVE DISCRIMINATION

Sixty-three percent (63%) of our participants had experienced a serious act of discrimination — events that would have a major impact on a person’s quality of life and ability to sustain themselves financially or emotionally. These events included the following:

- Lost job due to bias
- Eviction due to bias
- School bullying/harassment so severe the respondent had to drop out
- Teacher bullying
- Physical assault due to bias
- Sexual assault due to bias
- Homelessness because of gender identity/expression
- Lost relationship with partner or children due to gender identity/expression
- Denial of medical service due to bias
- Incarceration due to gender identity/expression

Almost a quarter (23%) of our respondents experienced a catastrophic level of discrimination — having been impacted by at least three of the above major life-disrupting events due to bias. These compounding acts of discrimination — due to the prejudice of others or lack of protective laws — exponentially increase the difficulty of bouncing back and establishing a stable economic and home life.

CONCLUSION

It is part of social and legal convention in the United States to discriminate against, ridicule, and abuse transgender and gender non-conforming people within foundational institutions such as the family, schools, the workplace and health care settings, every day. Instead of recognizing that the moral failure lies in society’s unwillingness to embrace different gender identities and expressions, society blames transgender and gender non-conforming people for bringing the discrimination and violence on themselves.

Nearly every system and institution in the United States, both large and small, from local to national, is implicated by this data. Medical providers and health systems, government agencies, families, businesses and employers, schools and colleges, police departments, jail and prison systems—each of these systems and institutions is failing daily in its obligation to serve transgender and gender non-conforming people, instead subjecting them to mistreatment ranging from commonplace disrespect to outright violence, abuse and the denial of human dignity. The consequences of these widespread injustices are human and real, ranging from unemployment and homelessness to illness and death.

This report is a call to action for all of us, especially for those who pass laws and set policies and practices, whose action or continued inaction will make a significant difference between the current climate of discrimination and violence and a world of freedom and equality. And everyone else, from those who drive buses or teach our children to those who sit on the judicial bench or write prescriptions, must also take up the call for human rights for transgender and gender non-conforming people, and confront this pattern of abuse and injustice.

We must accept nothing less than a complete elimination of this pervasive inhumanity; we must work continuously and strenuously together for justice.

“My mother disowned me. I was fired from my job after 18 years of loyal employment. I was forced onto public assistance to survive. But still I have pressed forward, started a new career, and rebuilt my immediate family. You are defined not by falling, but how well you rise after falling. I'm a licensed practical nurse now and am studying to become an RN. I have walked these streets and been harassed nearly every day, but I will not change. I am back out there the next day with my head up.”

—Survey Respondent

Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, Executive Summary

Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling.

TRANSGENDER 101:
A QUICK GUIDE ON BEING AN ALLY TO PEOPLE WHO ARE TRANSGENDER AND GENDER NON-CONFORMING

Transgender Identities

"Transgender" and "gender non-conforming people" refer to people who transcend gendered social roles assigned at birth based on their anatomical sex. The term transgender is used broadly to refer to countless identities and gender expressions, including but not limited to: male-to-female (MTF), female-to-male (FTM), gender queer, trans, transsexual, cross dresser, boi, butch, queen, etc. The term gender non-conforming is used to refer to individuals who transgress gender in various ways, but who may not identify as transgender. Identity in this context is really about self-determination; about letting the world know how you identify instead of being classified by constructed gender norms. People come from different backgrounds and experience the world in different ways and as a result may attach entirely different meanings to what it means to be transgender or any of the other identities listed above. There is not one trans narrative, just as there is not one human narrative.

Self-Determination

Self-determination refers to the right of individuals and communities to have full power over our own lives. We live under complex legal, medical, social and state systems that restrict gender expression and privilege some genders over others. Gender self-determination necessarily includes access to and control over healthcare, holistic mental and emotional support, fashion and self-expression, gender-affirming housing, education, bathrooms, and social services, freedom from violence, harassment, and incarceration, and all the tools we need to be fabulous, empowered and safe in how we live in our genders. Gender self-determination means having control over our own gender identities, free from limitation. Some aspects of one’s self-identification include:

Pronouns

Pronouns are words used to refer to someone in the third person and, in the English language, pronouns often indicate someone’s gender identity. Common pronouns are “he” and “she.” If you are not sure what someone’s preferred pronoun is, simply ask, “What pronoun do you prefer?” If you discover that you have been using the wrong pronoun, politely correct yourself. As an ally, you can also interrupt someone who is mispronouncing another person so that the burden of making this correction isn’t on the transgender person.

Transition

"Transition" is a term some transgender people use to refer to the period of their lives where they are crossing from one gender identity to another. To be a trans ally, don’t make assumptions that there is one way that transpeople experience their gender transition. There are many different ways that a trans person can transition from one gender identity to another. For some, transition can be a fluid experience constantly changing over the course of someone’s life. Transpeople “come out” as transgender at all different ages and may change their gender identity once, several times, frequently, or constantly. Some transpeople choose to change their names and pronouns, to have surgeries, and to take hormones, while other transpeople do some or none of these things. Some transpeople identify as both feminine and masculine depending on the day or circumstance.
Sexual Orientation
Gender identity and sexual orientation are not synonymous. Sexual orientation is about who you are attracted to. Gender identity is about how you identify your gender. Like non-transgender people, transpeople can identify as gay, lesbian, straight, bisexual, queer, etc.

Names
Choosing a name is an important step in the transition process for many transpeople. Having a name that matches one's gender identity is not only important to allow people to live life as their full selves, but it is also important for their safety. A legal name change is required in order to change identity documents. Without identity documents that match an individual’s gender presentation, people experience increased barriers to employment, housing, medical care, etc. It is never okay to ask someone what their “old” name or “real” name was. If a transperson wants you to know, they will tell you. For many transpeople, the name given to them at birth can carry a great deal of sadness connected to loss of families, jobs, feeling disconnected from self, etc.

Surgeries and Hormone Therapy
Medical options are a personal decision. As a trans ally, you should never ask transpeople invasive questions about their bodies. Most people wouldn’t ask a non-transgender person whether they are on hormones or whether they have had surgeries, and it isn’t respectful to ask a transperson these questions either. It is especially rude (and confusing) when transpeople are asked if they have had “the surgery.” There are many different surgical options for transgender people, not one single surgery. It is also important to remember that not all transpeople have the option of medically transitioning by using hormones or by having gender-affirming surgeries. Many of these gender-affirming procedures are incredibly expensive and are often specifically excluded from health insurance plans for people who have health insurance. Also, many transpeople have no desire to transition medically. No matter how someone transitions, all genders should be respected and celebrated without regard for a hierarchy based on medical interventions and procedures.

Disclosing Identity and “Outing”
Transpeople may choose to be “out” in a variety of ways. It’s up to each individual to decide if they want to disclose their gender history to others. Outing people as trans is disrespectful and a serious safety concern. Transpeople are subjected to violence, including murder, as a result of having their identities disclosed. Outing all too often leads to loss of employment, housing, family, and friends. Someone’s gender identity is not something that should be gossiped about or casually shared with others.

Gendered Spaces and Facilities
Gendered spaces include but are not limited to prisons, jails, group homes, restrooms, and locker rooms. When spaces are explicitly gendered, those who fall outside perceived social norms of gender can be subjected to violence, harassment, and discrimination.

Prisons and Jails
Prisons and jails are a harsh and demeaning environment for everyone who is locked up. There are three key problems faced by transgender and gender non-conforming people on the inside: 1) placement upon incarceration, 2) harassment and sexual violence, and 3) medical access.

Placement
Transgender inmates are placed according to sex assigned to them at birth in Illinois. If placed in general population, many transgender people face harassment and discrimination from other
inmates. For their safety, some elect to be placed in a Protective Custody Unit. Unfortunately,
protective custody often means limited access to work and educational programs, limited or no
access to the law library, and excessive periods of isolation. Thus, most transgender prisoners do
not elect protective custody and instead are placed with a cellmate in the general population. Many
cellmates are transphobic – afraid of transgender people – and use the institutional offense process
to make false complaints against transgender cellmates so that they are removed from their cell and
placed in administrative segregation – also known as solitary confinement. No matter where they are
placed, they are not safe as women in men’s prisons, and vice versa.

Harassment and Sexual Violence
Because transwomen are women in men’s prisons, many are targets for sexual assault and sexual
violence by other inmates as well as correctional staff. Many transwomen have been raped while
incarcerated due to their gender identity. In addition, many report a culture of homophobia and
transphobia; consistently being called “faggot”, “sissy” and “freak” by other inmates and
correctional staff. Harassment also often occurs through mail tampering by correctional staff,
unjustified frequent cell searches, and strip-searches without legitimate reason.

Medical Access
Transgender people have serious medical needs relating to their gender identity and unrelated to
their gender identity. Like anyone else, they have illnesses and require medication. Many
transgender people find that medical access is restricted for all medical needs due to transphobia on
the part of the Facility Medical Director as well as medical unit staff. Most transgender people who
are incarcerated are either removed from hormone therapy immediately upon entry into a facility, or
are denied access to hormones or other trans-related healthcare. The impact of being denied
hormones can have serious emotional and physical consequences.

Restrooms
Do not police restrooms! Trans and gender non-conforming people may not match narrowly
constructed gendered bathrooms which can be extremely unsafe for transpeople. Determining
which restroom to use, or whether a restroom can be used, can also cause a great deal of anxiety for
transpeople. Encourage businesses, schools, airports, museums, and government buildings to create
non-gendered restrooms that are accessible for transgender people and others.

Transgender inclusion in the Mainstream Gay and Lesbian Rights Movement
Many mainstream gay and lesbian organizations have added the “T” and hold themselves out to be LGBT
organizations, but have done little to nothing to support transgender communities. Don’t just add the “T”
without doing the work! Consider the needs and wishes of transgender and gender non-conforming
communities and individuals when doing activist work, and remember that transphobia is an
institutionalized problem that we all need to actively work against to unlearn – including gays, lesbians,
bisexuals, and even transgender people.

Listening to Trans Voices
Do not make assumptions about what services or political actions are needed for members of the
transgender community. One of the biggest roles of an ally is to learn how to listen to the needs of others.
Do not rely on one trans person to inform you or educate you about what the needs are of varying trans
communities. It is not the job of transpeople to educate non-transpeople about transphobia. If you are in a
position to create change, empower trans and gender non-conforming folks to lead the way and help them
with the tools that may be necessary to do so.

Transformative Justice Law Project of Illinois
4707 N. Broadway, Suite 307, Chicago, IL 60640 (p) 773.272.1822 (t) 773.365.1676
Policing
As a result of barriers to education, employment, housing, and medical care, many trans and gender non-conforming people live in poverty. Low-income communities face higher rates of policing and arrests. Many transwomen, particularly transwomen of color, are profiled and arrested for prostitution even when not engaging in the sex trade — many practitioners refer to this as “walking while trans” much like racial profiling is called “driving while Black.” As a result of the barriers listed above, some trans and gender non-conforming people may be forced to rely on survival crimes such as trespass, loitering, retail theft, etc.

Transphobia and Violence
Trans and gender-non conforming people, particularly transwomen of color, are subjected to higher rates of violence as a result of transphobia. Transpeople can experience violence due to being “outed” and for not “passing.” Transpeople suffer violence at the hands of law enforcement, correctional staff, family members, teachers, etc. The barriers listed above often times place transpeople in situations where acts of violence are more likely to occur including: homeless shelters, police profiling, jails, group homes, foster care, etc.

Action steps for being an Ally:

Educate Yourself by researching organizations, reading books and articles about trans and gender non-conforming people, and attending trainings and workshops.

Have Discussions with other non-transpeople about ways you can work against transphobia. Do not rely on transpeople to educate you about transphobia. Do not try to engage by discussing the latest film or book that came out about transgender people. If a trans person wants to talk to about a film or article, they will bring it up. It can be exhausting to have repeated conversations with people about trans identities without consent.

Recognize Oppression as an intersecting system of barriers that had lead to institutionalized racism, sexism, classism, homophobia, transphobia, and ableism. The process of learning how to be an ally to transpeople includes an understanding of how all of these forms of oppression are connected. For example, transwomen of color are disproportionately represented in prisons and jails and are more likely to be victims of harassment and violence, experiencing an intersection of all of the above listed oppressions.

Educate Others once you have educated yourself about transphobia, transgender issues, and how to be a good ally.

Interrupt Transphobic Behavior whenever you see it happening and when it is safe to do so.
RESOURCES

Local Organizations:

**Broadway Youth Center**
3179 N. Broadway Chicago, IL 60657
773-935-3151
www.howardbrown.org

**Young Women’s Empowerment Project**
ywepchicago.wordpress.com

**Project NIA**
773-392-5165
www.project-nia.org

**Transformative Justice Law Project of Illinois**
4707 N. Broadway, Suite 307, Chicago, IL 60640
773-272-1822
www.tjlp.org

**GenderQueer Chicago**
genderqueerchicago.blogspot.com

**Howard Brown Health Center**
4025 N. Sheridan Road Chicago, IL 60613
773-388-1600
www.howardbrown.org

**Chicago Women’s Health Center**
3435 N Sheffield Ave # 206A Chicago, IL 60657
(773) 935-6126
www.chicagowomenshealthcenter.org

Web Resources:
Gender Education and Advocacy www.gender.org
Intersexed Society of North America: www.isna.org
Lambda Legal: www.lambdalegal.org
Leading Transgender Organizations: www.gendertalk.com
PFLAG’s Transgender Support Network: www.centrpath.org/pflag-talk
Sylvia Rivera Law Project: www.srcp.org
Transgender Law Center: transgenderlawcenter.org/cms
TGJ Justice Project: www.tgjp.org

Books:
*Body Alchemy: Transsexual Portraits*, by Loren Cameron
*Gender Outlaw: On Men, Women and the Rest of Us*, by Kate Bornstein
*GenderQueer*, edited by Riki Wilchins, Joan Nestle, and Clare Howell
*Exile and Pride*, by Eli Clare
*Horny, Honey, Mis Thang: Being Black, Gay and on the Streets*, by Leon E. Pettisway
*Normal Life*, by Dean Spade
*Queer (In)Justice*, by Joey Mogul, Andrea Ritchie, Kay Whitlock
*Transgender Rights*, edited by Paisley Currah, Richard M. Juang, and Shannon Price Minter
*Transgender Warrior: Making History from Joan of Arc to RuPaul*, by Leslie Feinberg
*Trans Liberation: Beyond Pink and Blue*, by Leslie Feinberg,
*Transgender Care Recommended Guidelines, Practical Information and Personal Accounts*, Gianna E. Israel and Donald E. Tarver
*Trans Forming Families: Real Stories about Transgendered Loved Ones*, by Mary Boenke
*True Self: Understanding Transsexuality for Families, Friends, Coworkers and Helping Professionals*, by Mildred L. Brown

Transformative Justice Law Project of Illinois
4707 N. Broadway, Suite 307, Chicago, IL 60640 (p) 773.272.1822 (f) 773.305.1676
SYSTEMS OF INEQUALITY: POVERTY & HOMELESSNESS

Transgender and gender non-conforming people are much more likely to be poor or homeless than the average person. This diagram shows how various factors combine into an interlocking system that keep many trans and gender non-conforming people in situations that are vulnerable and unequal.

Can't apply for school or access higher education due to lack of I.D. or because their I.D. doesn't match the name or gender they live as

Drop out due to harassment, violence and/or discrimination at school

Low income or no income

Discrimination in hiring and workplace because few laws prohibit employment discrimination on the basis of gender identity; it's hard to find trans-aware legal assistance

Unequal access to benefits because benefit applications require I.D. which may show an incorrect name or gender; if cut off from welfare illegally, it's hard to find trans-aware legal assistance

Can't apply for jobs or access good employment due to lack of I.D. or because their I.D. doesn't match the name or gender they live as

Persistent and severe medical problems: transphobic violence leads to increased mental health and medical problems.

No access to health care: trans people are often denied all treatment or are afraid to seek care due to past mistreatment

Trans-specific physical and mental health care needs are often not provided or covered even if insured; shortage of knowledgeable health care professionals who can provide trans-specific care

Permanent housing inaccessible due to housing discrimination in private housing market; low-income housing options are often gender-segregated, and trans people are rejected for placement

Kicked out of home because of abuse from parents and foster parents; trans youth are not allowed to express their gender identity in gender-segregated group homes

Homeless or at risk for homelessness

Barriers to education

Temporary housing inaccessible often rejected from gender-segregated shelters or experience harassment and abuse at shelters

Bias, discrimination and ignorance in medicine: inappropriate and harmful treatment, including institutionalization and damaging, incompetent medical procedures
This diagram illustrates how overpolicing and profiling of low income people and of trans and gender non-conforming people intersect, producing a far higher risk than average of imprisonment, police harassment, and violence for low income trans people.

- **Subject to profiling and harassment:** Excessive police presence in poor communities; increased exposure to police
- **Charged with survival crimes (sex work, drugs, theft, etc.) due to lack of access to gainful employment or education**
- **Charged with “Quality of Life” crimes like sleeping outside, turnstile jumping, loitering, etc. due to lack of resources (housing, money)**
- **False arrests for using the “wrong” bathroom**
- **False arrests for lack of proper identity documents (by INS, police, etc.)**
- **Trans women are often falsely arrested for soliciting just for being transgender**

Low-income trans people are exposed to arrest, police harassment, incarceration and violence far more than the average person

- **Trans people suffer additional gender-related harms while in custody of the criminal justice system**
- **Gender-segregated arrest procedures (searches, holding cells, policies and procedures, etc.) do not accommodate trans people.** Low-income transpeople are especially targeted due to lack of access to health care that would help them “pass” as non-trans people, as well as surgical procedures, and are commonly misclassified by arresting officers as “male” or “female” based on their appearance or whether they’ve had genital surgery.
- **Denied access to hormones and other trans-specific health care while incarcerated.** Forced to change gendered characteristics of appearance in prison (made to cut hair, give up prosthetics, clothing). This results in mental anguish and increased exposure to harassment and violence because appearance may conform even less to gender identity.
- **Isolated and/or subjected to increased sexual violence, harassment, and abuse at the hands of prisoners and corrections facility staff.**
Where to File Employment Discrimination Claims

The following table provides general guidance. This is not a guarantee of coverage. Certain exceptions and limitations may apply. You may be able to file your claim with more than one agency. Please telephone an agency if you have questions.

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<td>Geographic Limitations</td>
<td>Violation occurred within the City of Chicago</td>
<td>Violation occurred within Cook County</td>
<td>Violation occurred within Illinois</td>
<td>Violation occurred within U.S. or at U.S. company located outside U.S.</td>
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<td>Time Limitations</td>
<td>Must file within 180 days of alleged violation</td>
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<td>300 days (or 180 days if state fair employment agency does not cover)</td>
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<td>Employers (no minimum number of employees)</td>
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<td>Employers with at least 15 employees for Title VII and ADA claims and state and local governments; with at least 20 employees for ADEA; with at least 1 employee for Equal Pay Act, federal government, &amp; educational institutions</td>
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<td><strong>Kinds of Relief Available</strong></td>
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<td>Make whole damages (such as back pay, lost benefits and emotional distress damages)</td>
<td>Make whole damages (such as back pay, lost benefits and emotional distress damages)</td>
<td>Make whole damages (such as back pay, lost benefits and reinstatement)</td>
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<td>Other Damages (such as interest)</td>
<td>Compensatory Damages (such as out-of-pocket and emotional harm)</td>
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<td>Injunctive Relief (such as reinstatement), including emergency relief</td>
<td>Injunctive Relief (such as reinstatement and barring contracts with the State), including emergency relief</td>
<td>Injunctive Relief, including emergency relief</td>
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<td><strong>Office Hours</strong></td>
<td>Filing Hours: Monday through Friday 9:00 - 5:00 (2 copies of all filings required)</td>
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<tr>
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CFormerly cited as Ill. ST CH 110 ¶ 21-101

Effective: January 1, 2007

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness
Chapter 735. Civil Procedure

§ 21-101. Proceedings; parties. If any person who is a resident of this State and has resided in this State for 6 months desires to change his or her name and to assume another name by which to be afterwards called and known, the person may file a petition in the circuit court of the county wherein he or she resides praying for that relief.

If it appears to the court that the conditions hereinafter mentioned have been complied with and that there is no reason why the prayer should not be granted, the court, by an order to be entered of record, may direct and provide that the name of that person be changed in accordance with the prayer in the petition.

The filing of a petition in accordance with this Section shall be the sole and exclusive means by which any person committed under the laws of this State to a penal institution may change his or her name and assume another name.

However, any person convicted of a felony in this State or any other state who has not been pardoned may not file a petition for a name change until 10 years have passed since completion and discharge from his or her sentence. A person who has been convicted of identity theft, aggravated identity theft, felony or misdemeanor criminal sexual abuse when the victim of the offense at the time of its commission is under 18 years of age, felony or misdemeanor sexual exploitation of a child, felony or misdemeanor indecent solicitation of a child, or felony or misdemeanor indecent solicitation of an adult, or any other offense for which a person is required to register under the Sex Offender Registration Act [FN1]in this State or any other state who has not been pardoned shall not be permitted to file a petition for a name change in the courts of Illinois.

A petitioner may include his or her spouse and adult unmarried children, with their consent, and his or her minor children where it appears to the court that it is for their best interest, in the petition and prayer, and the court's order shall then include the spouse and children.

Whenever any minor has resided in the family of any person for the space of 3 years and has been recognized and known as an adopted child in the family of that person, the application herein provided for may be made by the person having that minor in his or her family.

An order shall be entered as to a minor only if the court finds by clear and convincing evidence that the change is necessary to serve the best interest of the child. In determining the best interest of a minor child under this Section, the court shall consider all relevant factors, including:

(1) The wishes of the child's parents and any person acting as a parent who has physical custody of the child.

(2) The wishes of the child and the reasons for those wishes. The court may interview the child in chambers to ascertain the child's wishes with respect to the change of name. Counsel shall be present at the interview unless
otherwise agreed upon by the parties. The court shall cause a court reporter to be present who shall make a complete record of the interview instantaneously to be part of the record in the case.

(3) The interaction and interrelationship of the child with his or her parents or persons acting as parents who have physical custody of the child, step-parents, siblings, step-siblings, or any other person who may significantly affect the child's best interest.

(4) The child's adjustment to his or her home, school, and community.

CREDIT(S)


[FN1] 730 ILCS 150/1 et seq.

HISTORICAL AND STATUTORY NOTES

Article 1, § 1-5 of P.A. 87-409 (Art. 5, § 5-5 of which enacted this section), provides:

"Sec. 1-5. Purpose. The purpose of this amendatory Act is to revise the Code of Civil Procedure by incorporating into that Code the provisions of various other Acts or parts of Acts, making only nonsubstantive changes."

P.A. 88-25, in the paragraph allowing a person to file a court petition for a name change, inserted the sentence relating to persons convicted of felonies who have not been pardoned.

P.A. 89-192, in the sentence prohibiting persons convicted of a felony without being pardoned from filing a petition for a name change until 2 years have passed since the completion or discharge of their sentence, inserted "a misdemeanor criminal sexual abuse when the victim of the offense at the time of its commission is under 18 years of age, misdemeanor sexual exploitation of a child, misdemeanor indecent solicitation of a child, or misdemeanor indecent solicitation of an adult."

P.A. 89-462, in the fourth sentence, substituted "10 years" for "2 years" and inserted the fifth sentence.

P.A. 89-462 incorporated the amendment by P.A. 89-192.

P.A. 94-944, § 5, in the first paragraph, deleted "a misdemeanor criminal sexual abuse when the victim of the offense at the time of its commission is under 18 years of age, misdemeanor sexual exploitation of a child, misdemeanor indecent solicitation of a child, or misdemeanor indecent solicitation of an adult" following "However, any person convicted of a felony", and substituted "A person who has been convicted of identity theft, aggravated identity theft, felony or misdemeanor criminal sexual abuse when the victim of the offense at the time of its commission is under 18 years of age, felony or misdemeanor sexual exploitation of a child, felony or misdemeanor indecent solicitation of a child, or felony or misdemeanor indecent solicitation of an adult, or any other offense for which a person is required to register under the Sex Offender Registration Act in this State or any other state who has not been pardoned shall not be permitted to file a petition for a name change in the courts of Illinois." for "A person who is required to register as a sex offender under the Sex Offender Registration Act may not file a petition for a name
change until the person is no longer under a duty to register under that Act."

Prior Laws:

Laws 1847, p. 57, § 1.
Laws 1859, p. 128, § 1.
R.S. 1874, p. 715, § 1.
Laws 1933, p. 718, § 1.
P.A. 83-343, § 29.
P.A. 83-706, § 43.
P.A. 84-320, § 1.
P.A. 84-1301, § 2.

LAW REVIEW AND JOURNAL COMMENTARIES


Jurisdiction of the divorce court to change the name of a minor child. Meyer Weinberg, 1955, 37 Chi.B.Rec. 29.


LIBRARY REFERENCES

_names 20
Westlaw Topic No. 269.
C.J.S. Names §§ 7, 21 to 28.

RESEARCH REFERENCES

ALR Library

40 ALR 5th 697, Rights and Remedies of Parents Inter Se With Respect to the Names of Their Children.

Encyclopedias

Illinois Law and Practice Names § 4, Change of Name--Statutory Regulation, Generally.

Illinois Law and Practice Names § 5, Change of Name--Application of Statute to Minors.

Illinois Law and Practice Names § 6, Change of Name--Application of Statute to Persons Convicted of Crimes.
Forms


Illinois Civil Practice Forms § 73:1, Governing Law.

Illinois Civil Practice Forms § 73:4, Petition for Individual Name Change.


Treatises and Practice Aids

12 Illinois Practice Series 750.5/413, Judgment.

12 Illinois Practice Series 735.5/21-101, Change of Name; Proceedings; Parties.

12 Illinois Practice Series 735.5/21-102, Petition.

17 Illinois Practice Series § 23:2, The Client's Name.

17 Illinois Practice Series § 30:3, Children's Names.

17 Illinois Practice Series § 30:4, Determining Child's Name in Contested Proceeding.

NOTES OF DECISIONS

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1. Validity

Statute providing that only parents with legal custody of a child may petition for a change of that child's name did not violate equal protection rights of noncustodial parent. In re Marriage of Charnogorsky, App. 1 Dist. 1998, 236
2. Construction with other laws

Standards for deciding petitions for minor's name changes were not significantly different under statute providing criteria for making child custody determinations formerly used by courts and Code of Civil Procedure provision currently in effect for making such determinations, except for burden of proof, and thus, cases cited under statute applicable to child custody determinations still provided guidance in determining issue under Code of Civil Procedure. *In re Mattson*, App. 2 Dist.1993, 181 Ill.Dec. 810, 240 Ill.App.3d 993, 608 N.E.2d 1284. Names:

3. Common law rights

Children have common-law right to take any name they choose; however, such right is not absolute and must not interfere with rights of others. *Weinert v. Weinert*, App. 2 Dist.1982, 60 Ill.Dec. 920, 105 Ill.App.3d 56, 433 N.E.2d 1158. Names:

By common law, every person is free not only to assume any surname he or she please, but also to change it at any time. *Thomas v. Thomas*, App. 1 Dist.1981, 56 Ill.Dec. 604, 100 Ill.App.3d 1080, 427 N.E.2d 1009. Names:

Common-law right of individual to change his name without application to courts is valid only if such action does not interfere with rights of others. *Chaney v. Civil Service Commission*, 1980, 45 Ill.Dec. 146, 82 Ill.2d 289, 412 N.E.2d 497. Names:

Statutory provisions with reference to court proceedings to change name are not exclusive but are merely permissive, and common law is not abrogated. *Solomon v. Solomon*, App.1955, 5 Ill.App.2d 297, 125 N.E.2d 675. Names:

At common law, individual may change name without legal proceedings, and name he assumes constitutes his legal name for all purposes and statutory provisions, permitting individual to apply to court for order changing name, are merely permissive, and do not abrogate common-law right to change name without such application. *Reinken v. Reinken*, 1933, 184 N.E. 639, 351 Ill. 409.

4. Agreement as to child's last name

Although testimony of ex-husband and ex-wife indicated that they discussed potential names for child who was born after marriage was dissolved, it did not establish an express or implied agreement as to the child's last name. *In re Marriage of Charnogorsky*, App. 1 Dist.1998, 236 Ill.Dec. 234, 302 Ill.App.3d 649, 707 N.E.2d 79. Husband And Wife:

Neither ex-wife's signing visitation order which referred to minor child by using both parties' last names nor her failing to require ex-husband to correct trust fund documents to remove his last name as part of child's last name required finding that parties had an express or an implied agreement as to last name of child who was born after marriage was dissolved. *In re Marriage of Charnogorsky*, App. 1 Dist.1998, 236 Ill.Dec. 234, 302 Ill.App.3d 649, 707 N.E.2d 79. Divorce; Husband And Wife:

5. Discretion of court

The most important consideration in the matter of a change of name of minor child of divorced parents was welfare of child and it was a matter within discretion of trial court. *Solomon v. Solomon*, App.1955, 5 Ill.App.2d 297, 125
N.E.2d 675. Divorce 313.1

6. Jurisdiction

Trial court, which had jurisdiction over divorce, had personal jurisdiction over child of divorced parents, and thus, could order child to use no other name than name of divorced father; such jurisdiction is a necessary incident of a custody determination in a dissolution proceeding. In re Marriage of Presson, 1984, 80 Ill.Dec. 294, 102 N.E.2d 303, 465 N.E.2d 85. Divorce 313.1

Trial court, which had jurisdiction over divorce, had jurisdiction to enjoin any change in name used by child of divorced parents, even though order did not enjoin legal change of name, since de facto change of name on child's school, medical and other records could have as great an effect on child's daily life as a legal change, and court had jurisdiction to enjoin a legal change of name proceeding. In re Marriage of Presson, 1984, 80 Ill.Dec. 294, 102 N.E.2d 303, 465 N.E.2d 85. Injunction 110

7. Standing

Ex-husband, as minor child's noncustodial parent, did not have standing to petition to change child's name. In re Marriage of Charnogorsky, App. 1 Dist.1998, 236 Ill.Dec. 234, 302 Ill.App.3d 649, 707 N.E.2d 79. Divorce 313.1; Names 20

Noncustodial parent can enjoin a custodial parent from bringing a petition to change child's name as a matter incident to custody; however, a noncustodial parent is not authorized to bring a petition to change child's name under statute governing name changes. In re Marriage of Charnogorsky, App. 1 Dist.1998, 236 Ill.Dec. 234, 302 Ill.App.3d 649, 707 N.E.2d 79. Names 20


8. Best interests of the child

Factors to be considered in determining whether name change would be in best interests of child are: wishes of child and child's parents; stated reasons for proposed name change; child's age and maturity; nature of family situation; strength of tie between child and each parent; any misconduct toward or neglect of child by parent opposing name change; and name by which child has customarily been called. Dattilo v. Groth, App. 1 Dist.1991, 165 Ill.Dec. 17, 222 Ill.App.3d 467, 584 N.E.2d 196. Names 20

Middle name of six-year-old child who was born out-of-wedlock was properly changed to include natural father's surname; trial court could conclude that name change was in best interests of child, notwithstanding child's and mother's opposition thereto, as middle name change would not be disruptive, and change would affirm child's relationship with father, who had exercised all of his visitation rights from time child was born. Dattilo v. Groth, App. 1 Dist.1991, 165 Ill.Dec. 17, 222 Ill.App.3d 467, 584 N.E.2d 196. Names 20

Test applied to establish best interest of child when determining whether to change that child's surname is identical to standard implied in awarding custody pursuant to divorce. Sullivan v. McGaw, App. 2 Dist.1985, 89 Ill.Dec. 540, 134 Ill.App.3d 455, 480 N.E.2d 1283. Names 20

Although standard in determining whether to grant a change of child's name is the best interests of the child, seven-
year-old child was not necessarily an able judge of what his best interests were, since neither his emotional nor his mental development were complete, and thus, testimony of child regarding proposed name change would not be the controlling factor. In re Marriage of Presson, 1984, 80 Ill.Dec. 294, 102 Ill.2d 303, 465 N.E.2d 85, Names 20

In determining whether change of name is in best interest of a child, it is well to consider whether interests of others are sought to be served by the proceeding. In re Marriage of Omelson, App. 5 Dist.1983, 68 Ill.Dec. 307, 112 Ill.App.3d 725, 445 N.E.2d 951. Names 20

To extent that paternal right of father to have his children bear his surname recognizes father's interest in maintaining his relationship with his child for their mutual benefit, it becomes highly relevant in proceeding instituted by mother to change child's name. In re Marriage of Omelson, App. 5 Dist.1983, 68 Ill.Dec. 307, 112 Ill.App.3d 725, 445 N.E.2d 951. Names 20

2. Adoption of child

Divorced mother would not be permitted to change seven-year-old child's name to that of mother's new husband where husband has not adopted child and was under no legal obligation to support him, such obligations were met faithfully by child's father, and father regularly visited child, notwithstanding fact that child had requested change of name. In re Marriage of Presson, 1984, 80 Ill.Dec. 294, 102 Ill.2d 303, 465 N.E.2d 85. Divorce 313.1

10. Hearing

Determination of whether interests of children of divorced parents would best be served by allowing them to use stepfather's surname even though the children had not been adopted and stepfather was not legally burdened with obligation of support was one which should have been reached only after a hearing where evidence, rather than allegations, could be adduced by both parties. Weinert v. Weinert, App. 2 Dist.1982, 60 Ill.Dec. 920, 105 Ill.App.3d 56, 433 N.E.2d 1158. Names 20

11. Sufficiency of evidence

Sufficient evidence supported trial court's finding that allowing divorced father's 11-year-old son to change his surname to that of son's stepfather was in son's best interests; son had lived with stepfather most of son's life and considered stepfather his "dad," son had not seen his father for four years and had no relationship with him, and son testified that having a name different from the other members of his "real family," including his step-siblings, created difficulties for him in school and elsewhere. In re Howard ex rel. Bailey, App. 2 Dist.2003, 279 Ill.Dec. 201, 343 Ill.App.3d 1201, 799 N.E.2d 1004. Names 20

Mother failed to meet her burden of proof to support changing of surname of minor child born out-of-wedlock from father's name to mother's, where only evidence that mother presented of minor's best interest was testimony that minor had been teased by schoolmates on three occasions because her last name was not the same as her custodial mother's. In re Mattson, App. 2 Dist.1993, 181 Ill.Dec. 810, 240 Ill.App.3d 993, 608 N.E.2d 1284. Children Out-of-wedlock 1

Fact that child had different name than his mother and stepsiblings with whom he lived following parents' divorce and remarriage may cause some concern, confusion and embarrassment for child and mother, but such difficulties alone were not sufficient to warrant changing child's name. In re Marriage of Presson, 1984, 80 Ill.Dec. 294, 102 Ill.2d 303, 465 N.E.2d 85. Divorce 313.1

In light of evidence that divorced father maintained active interest in child born during now dissolved marriage,
loved her, continued to support her and had committed no wrong toward her, and in absence of evidence that granting name change to child would further any purpose other than that of temporary, and superficial, expedient, best interest of child would be served by denying petition for change of name, awaiting her maturity and leaving name change decision to her. In re Marriage of Omelson, App. 5 Dist. 1983, 68 Ill. Dec. 307, 112 Ill. App. 3d 725, 445 N.E. 2d 951. Names 20

12. Injunctions

Trial court did not abuse its discretion in denying custodial mother's petition for surname change of children and granting noncustodial father's petition enjoining mother from using stepfather's surname as any other surname than his own on official records, where father was willingly meeting his financial obligations towards his children, record did not reflect any misconduct or neglect of children by noncustodial father, where children expressed love for both their natural parents, and where stepfather had no support obligations to children. In re Marriage of Schaefer, App. 1 Dist. 1987, 113 Ill. Dec. 725, 161 Ill. App. 3d 841, 515 N.E. 2d 710. Divorce 313.1

Trial court's grant of injunction against initiation of legal proceedings by mother of 12-year-old to change child's surname to that of her present husband but denial of injunction against child's general use of that surname or its use in official records correctly balanced interest of adjudicated father in maintaining his relationship with child and interest of child in continuing use of the surname of his stepfather, which the child had been using for a long period of time. Siatham v. Domyan, App. 5 Dist. 1987, 106 Ill. Dec. 813, 153 Ill. App. 3d 1003, 506 N.E. 2d 613, appeal denied 110 Ill. Dec. 465, 115 Ill. 2d 551, 511 N.E. 2d 437. Names 20

Although trial court acted properly in ordering divorced mother not to change child's name, such order was overbroad to the extent that it extended to informal situations within family, since order would be extremely difficult to enforce in such situations; to the extent order enjoined divorced mother and her new husband from changing child's name in any legal proceeding or using any other name in official records or membership application or records, order could be enforced, and thus, was proper. In re Marriage of Presson, 1984, 80 Ill. Dec. 294, 102 Ill. 2d 303, 465 N.E. 2d 85. Injunction 204

In suit to declare alleged marriage void, allegations of complaint, prayer and evidence did not warrant issuance of injunction against defendant's being known as "Mrs. _______", or "the former Mrs. _______", especially in view of antecedent to this act permitting change of name. O'Brien v. Eustice, App. 1939, 19 N.E. 2d 137, 298 Ill. App. 510. Marriage 61

13. Laches

Doctrine of laches was inapplicable in suit by custodial mother to change children's surname and petition by father to enjoin mother from changing children's surname. In re Marriage of Schaefer, App. 1 Dist. 1987, 113 Ill. Dec. 725, 161 Ill. App. 3d 841, 515 N.E. 2d 710. Divorce 313.1

14. Estoppel

Custodial mother failed to demonstrate her reliance on noncustodial father's conduct in allegedly not objecting to change of children's surname for nine months or more so as to establish equitable estoppel and thus prevent noncustodial father from petitioning to enjoin children's name change. In re Marriage of Schaefer, App. 1 Dist. 1987, 113 Ill. Dec. 725, 161 Ill. App. 3d 841, 515 N.E. 2d 710. Estoppel 118

15. Record
Although trial court is not required to set out specific factual findings, record should reflect that court considered evidence of statutory factors before making its decision on petition to change minor's name. Lawrence v. Lawrence, App. 1 Dist. 1980, 41 Ill. Dec. 908, 86 Ill. App. 3d 810, 408 N.E.2d 330.

16. Waiver

Ex-wife, who failed to present in proceeding brought for determination that ex-husband was not father of one of ex-wife's children issue that change of child's original family name did not violate prior divorce orders that ex-wife and ex-husband were not to raise question of fatherhood of child, could not raise the issue for first time on review. Lawrence v. Lawrence, App. 1 Dist. 1980, 41 Ill. Dec. 908, 86 Ill. App. 3d 810, 408 N.E.2d 330. Children Out-of-wedlock

17. Review

Trial court's statement that it did not believe statutory standards for deciding petitions for minor's name changes had been met and that it did not think petitioner had presented sufficient evidence that child's best interest dictated that her name be changed clearly reflected that court properly considered all relevant factors in making determination, but found that evidence to support change was lacking, rather than having prejudged matter by denying petition without hearing. In re Mattson, App. 2 Dist. 1993, 181 Ill. Dec. 810, 240 Ill. App. 3d 993, 608 N.E.2d 1284. Children Out-of-wedlock

Trial court did not abuse discretion in granting petition for change of child's name from that of father to that of her stepfather, where child was 12 years old, there was no evidence of coercion in his desire to change her name, and several years had elapsed since mother's divorce and remarriage. In re Craig by Ahlden, App. 4 Dist. 1987, 116 Ill. Dec. 106, 164 Ill. App. 3d 1090, 518 N.E.2d 728, appeal denied 119 Ill. Dec. 383, 119 Ill. 2d 557, 522 N.E.2d 1242. Names


Although petition for change of name was brought in name of minor child, where child was of such tender years that she could have no independent judgment in the matter and would be wholly subject to suggestion and desire of mother, Appellate Court would regard proceeding as instituted and prosecuted by mother. In re Marriage of Omelson, App. 5 Dist. 1983, 68 Ill. Dec. 307, 112 Ill. App. 3d 725, 445 N.E.2d 951. Names

In proceeding brought by ex-wife for determination that ex-husband was not father of one of ex-wife's children, it was not an abuse of discretion to direct ex-wife to restore child's original family name after ex-wife had secured name change for child where trial court in divorce proceeding, in ruling that parties were not to raise question of fatherhood of child, were to avoid the subject at all times and that ex-wife was not to deny that ex-husband was child's father, considered the best interests of child and no determination in that regard was made in change of name proceeding. Lawrence v. Lawrence, App. 1 Dist. 1980, 41 Ill. Dec. 908, 86 Ill. App. 3d 810, 408 N.E.2d 330. Children Out-of-wedlock


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Appellate Court of Illinois,
First District, Third Division.
In re MARRIAGE OF Sterling SIMMONS, Petitioner-Appellant,
and
Jennifer Simmons, Respondent-Appellee.

Nos. 1-03-2284, 1-03-2348.
Rehearing Denied March 15, 2005.

Background: Transsexual male, who was born female, and wife sought marriage dissolution and custody of minor child. The Circuit Court, Cook County, Gerald Bender, J., declared the marriage invalid, awarded sole care and custody of child to wife, and terminated transsexual male's parental rights. Transsexual male appealed.

Holdings: The Appellate Court, South, J., held that:
(1) transsexual male's marriage to wife was invalid as a same-sex marriage, and did not become valid when he had his internal female organs removed;
(2) transsexual male was not officially sexually reassigned when the state issued him a new birth certificate designating his sex as "male;"
(3) Parentage Act, under which husbands of artificially inseminated wives were treated as the natural fathers of any children thereby conceived, did not include transsexual male;
(4) Parentage Act, under which a child born from artificial insemination to two married parents retained his right to parentage with both parents even if the marriage was subsequently held invalid, did not include transsexual male;
(5) transsexual male, who was born female, could not be declared the de facto parent of minor child based upon his long, loving and close relationship with the minor child;
(6) minor child was not a third-party beneficiary to artificial insemination agreement between and wife and transsexual male; and
(7) denying parentage of minor child to transsexual male did not violate the minor child's right to equal protection of the laws.

Affirmed.

**306** **307** **308**

*944 Robert E. Lehrer; Diane L. Redleaf, Lehrer & Redleaf, Chicago, for Appellant.

*945 Patrick T. Murphy; Charles P. Golbert; Christopher J. Williams, Office of the Cook County Public Guardian, Chicago, for Minor-Appellant.

Peter Burbank, Arletta J. Markham, Chicago, for Appellee.

Justice SOUTH delivered the opinion of the court:

Petitioner, Sterling Robert Simmons, and the minor child respondent, through his child-representative, Patrick T. Murphy, the Cook County Public Guardian, have filed these consolidated appeals arising from an order of the circuit court of Cook County which denied the petition for dissolution of marriage; declared that the marriage between petitioner and respondent, Jennifer Simmons, was invalid; awarded respondent sole care and custody of the minor child; held that petitioner lacked standing to seek custody of the child; terminated petitioner's parental rights; held that the minor child's constitutional rights were protected; and denied the minor child's motion for declaratory judgment.

FACTUAL BACKGROUND

Petitioner was born a female on March 31, 1959, and given the name of Bessie Cornelia Lewis. At a very young age, he began experiencing a great discomfort with his female anatomy and became convinced that he was actually a boy who had been born into the body of a girl. This condition is commonly referred to in the psychiatric field as gender dysphoria or gender identity disorder. A person suffering from gender dysphoria is uncomfortable with his assigned or genetic sex and has a preoccupation with ridding himself of the physical characteristics of that assigned or genetic sex. To that end, petitioner began taking testosterone, the male hormone, to alter his appearance and started going by the name of Robert Sterling Simmons. He has been taking testosterone since he was 21 years old, and as a result thereof he now has the outward appearance of a man, which includes facial and body hair, male pattern baldness, a deep voice, a hypertrophied clito-
ris, and increased muscle and body mass.

FN1. Throughout this opinion, we shall refer to petitioner as “He.” This is done out of respect for petitioner and has no legal significance.

Petitioner and respondent participated in a wedding ceremony on August 10, 1985, and a certificate of marriage was issued by the county clerk of Cook County on August 29, 1985. In 1991, they decided to have a child, and it was agreed that respondent would undergo artificial insemination. As a result of that procedure, respondent gave birth to the minor child on July 20, 1992, and petitioner is listed as the father on the child’s birth certificate.

*946 On July 31, 1991, petitioner underwent a total abdominal hysterectomy and a bilateral salpingo oophorectomy, which removed his uterus, fallopian tubes and ovaries. However, he still to this day retains all of his external male genitalia, which includes a vagina, labia, a hypertrophied clitoris, and breasts.

In 1994, petitioner sought to obtain a new birth certificate which would designate his sex as “male.” In accordance with the Vital Records Act (410 ILCS 535/1 et seq. (West 2002)), Dr. Raymond McDermott, petitioner’s treating physician who specializes in obstetrics and gynecology, submitted an “Affidavit by Physician as to Change of Sex Designation” to the Department of Public Health, attesting that he had performed “certain surgical operations” on petitioner “by reason of which the sex designation” should be changed from “female” to “male.” The surgeries to which Dr. McDermott was alluding were the July 31, 1991, hysterectomy and oophorectomy. In October of 1994, the State Registrar issued petitioner a new birth certificate which bears the name of Sterling Robert Simmons and the gender designation of “male.” The original birth certificate has been placed under seal and can only be opened by court order. Additionally, petitioner’s name has been legally changed by court order to Sterling Robert Simmons.

The relationship between the parties was quite tumultuous and began to deteriorate throughout the years. On August 24, 1998, petitioner filed a petition for dissolution of marriage in which he sought, inter alia, temporary and permanent sole care and custody of the minor child. In her answer, respondent alleged that petitioner lacked standing to assert custody rights over the minor child because their same-sex marriage was invalid under Illinois law, and he was neither the biological nor adoptive parent. A trial was conducted on the petition, and the minor child was represented throughout the proceedings by a guardian ad litem and the office of the Public Guardian. At the conclusion of the trial, the court denied the petition for dissolution of marriage on the grounds that there was no marriage to dissolve since it was void ab initio as a same-sex marriage. The court also awarded sole custody of the minor child to respondent and declared that petitioner lacked parental rights or standing to seek custody. However, the court did grant petitioner visitation rights. While petitioner and the minor child appeal from the order, neither they nor respondent appeal that portion of the order which grants him visitation rights.

Petitioner and the minor child have raised several issues for our consideration: (1) whether the trial court erred in holding that petitioner is a woman and not legally male and, therefore, not legally married to respondent who is also a woman; (2) whether the trial court erred in holding that petitioner is not a legal parent under the Illinois Parentage Act (**308** **52750** ILCS **40/1** et seq. (West 2002)), the Illinois Parentage Act of 1984 (750 ILCS 45/1 et seq. (West 2002)), the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq. (West 2002)), or common law; (3) whether respondent is barred from challenging petitioner’s parentage of the minor child under the doctrines of equitable estoppel and laches and the statute of limitations as set forth in the Illinois Parentage Act; (4) whether the minor child can bar respondent from attacking the validity of petitioner’s parentage as an intended third-party beneficiary to his parents’ artificial insemination agreement; (5) whether the trial court’s finding that petitioner is not the legal father of the minor child violates the minor child’s constitutional rights to equal protection and due process; and (6) whether petitioner should be given standing as a parent to seek custody of the minor child under equitable or de facto parentage theories.

**DISCUSSION**

Under the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/101 et seq. (West 2002)), while a marriage between a man and a woman is valid (750 ILCS 5201 (West 2002)), a
marriage between two individuals of the same sex is prohibited (750 ILCS 5/212(a)(5) (West 2002)). However, parties to a marriage prohibited under section 212 who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment. 750 ILCS 5/212(b) (West 2002).

Petitioner challenges the trial court's conclusion that he is a female and not legally male. Petitioner was diagnosed as a transsexual male in his late teens and began undergoing sex reassignment treatments.

Petitioner maintains that he is male, that his marriage to respondent was valid, and that the trial court's conclusion that the marriage is invalid on the basis that he is a female was against the manifest weight of the evidence.

[1][2] The decision of the trial court following a bench trial should be overturned only if it is against the manifest weight of the evidence. In re Marriage of Kendra, 351 Ill. App. 3d 826, 829, 286 Ill. Dec. 812, 815 N.E.2d 22 (2004). A decision is against the manifest weight of the evidence when the opposite conclusion is apparent or when the ruling is unreasonably arbitrary or not based on the evidence. Judgment Services Corp. v. Sullivan, 321 Ill. App. 3d 151, 154, 254 Ill. Dec. 70, 746 N.E.2d 827 (2001). Under the Marriage Act, the formalities for a lawful marriage require a marriage between a man and a woman to be licensed, solemnized and registered as provided in the Marriage Act. 750 ILCS 5/201 (West 2002).

[3] *948 Dr. Laurence Levin, respondent's expert in the field of gender reassignment, testified that while petitioner presents the physical appearance of a male, he has clear, normal female external genitalia and breast tissue. Dr. Frederic Ettinger, petitioner's expert and a member of the Harry Benjamin International Gender Dysphoria Association, has treated hundreds of transsexuals during his medical career and described petitioner as a healthy male with male pattern baldness, the musculature of a male, facial and male body hair, and a male torso, but who still has female genitals, including atrophic or dysfunctional female breasts, atrophic labia, an enlarged clitoris, and a vagina. Dr. McDermott, while not an expert in the field of sexual or gender reassignment, testified that petitioner is still a female even after the hysterectomy and oophorectomy, and that those surgeries were never intended to be part of the sex-reassignment process. He admitted that the only reason he signed **309 ***53 the physician's affidavit in connection with the issuance of the new birth certificate was to "help out" petitioner and make it easier for him to legally change his sex from female to male. All of the physicians testified that there were other surgeries which had to be done on petitioner before he could be considered completely sexually reassigned, which would include a vaginectomy, reduction mammoplasty, metoidioplasty, scrotoplasty, urethralplasty, and phallosplasty.

Based upon the testimony of all of the expert witnesses who testified at trial that petitioner still possesses all of his female genitalia, we find that the judgment of the trial court that he is a female and not legally a male was not against the manifest weight of the evidence. Furthermore, once the trial court found that petitioner is a female who was "married" to another female, it had no choice but to deny the petition for dissolution of marriage on the grounds that the same-sex marriage was invalid under Illinois law.

Petitioner argues that even if the marriage was invalid at the time of the marriage ceremony in 1985, it subsequently became valid on July 31, 1991, when he underwent the hysterectomy and oophorectomy. He cites section 212(b) of the Marriage Act as support for his contention which provides that parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment. 750 ILCS 5/212(b) (West 2002). Petitioner maintains that on July 31, 1991, the "impediment" was removed, and that he and respondent cohabited after removal of the impediment. However, contrary to petitioner's contention, the "impediment" has never been removed because while he has undergone surgeries to remove his internal female organs, he still possesses all of his external female genitalia and requires additional surgeries before sex reassignment can be considered completed.

*949 Petitioner further contends that Illinois has officially acknowledged that he was sexually reassigned when the State Registrar issued him a new birth certificate designating his sex as "male." Under the Vital Records Act (410 ILCS 535/1 et seq., (West 2002)), for a person born in this state, the State Registrar of Vital Records shall establish a new certifi-
cate of birth when he receives:

"An affidavit by a physician that he has performed an operation on a person, and that by reason of the operation the sex designation on such person's birth record should be changed. The State Registrar of Vital Records may make any investigation or require any further information he deems necessary." 410 ILCS 535/17(d) (West 2002).

[4] Pursuant to this statute, Dr. McDermott filled out and submitted the physician's affidavit which stated that he had performed "certain surgical operations" on petitioner by reason of which the sex designation of petitioner should be changed from female to male. However, at trial, he admitted that the only reason he filled out the affidavit was to "help out" petitioner. While Dr. McDermott characterized petitioner's surgery as part of the sex change procedure on the one hand, he later admitted at trial that the sole reason behind the surgeries was petitioner's history of endocrine dysfunction and hyperstimulation with potential malignancy due to his long-term use of testosterone. Even if we were to accept petitioner's argument that the surgeries were part of his sex reassignment, it is clear that the reassignment has never been completed. According to Dr. McDermott and even Dr. Ettner, the sex change procedure is still "in process" and has not been completed, and **310 ***54 there are still other procedures which must be done in order to complete the sex reassignment or change. Therefore, the mere issuance of a new birth certificate cannot, legally speaking, make petitioner a male. Furthermore, it is unlikely that the State Registrar would have issued the new birth certificate had the information been disclosed to him that the individual seeking the new "male" birth certificate still had external female genitalia. Were we to accept petitioner's argument that the mere issuance of the new birth certificate conclusively establishes that he is now a man who may legally marry a woman in this state, we would also be compelled to declare that the marriage is valid based upon the mere fact that the county clerk of Cook County issued the parties a marriage license in 1985. The issuance of marriage licenses and new birth certificates are ministerial acts that generally do not involve fact-finding. Here, there was no fact-finding whatsoever on the part of the State Registrar of Vital Records. While the State Registrar had the right to conduct an investigation and make inquiries upon receipt of the application for a *950 new birth certificate, no such investigation was ever conducted. The courts, on the other hand, are fact-finding bodies, and in this particular instance the trial court found facts which the State Registrar did not find and ruled accordingly.

Petitioner maintains that even if we find his marriage is invalid, the artificial insemination agreement which he, respondent, and the physician signed pursuant to the Illinois Parentage Act (Parentage Act) (750 ILCS 40/1 et seq. (West 2002)) confers standing upon him to seek custody of the minor child.

The Parentage Act sets forth certain procedures for couples who wish to have children through artificial insemination:

"If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband shall be treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing executed and acknowledged by both the husband and wife. The physician who is to perform the technique shall certify their signatures and the date of the insemination, and file the husband's consent in the medical record where it shall be kept confidential and held by the patient's physician. However, the physician's failure to do so shall not affect the legal relationship between father and child." 750 ILCS 40/3(a) (West 2002).

On April 18, 1991, the parties went to a fertility clinic and entered into a written artificial insemination agreement with a physician to perform "one or more, if necessary," artificial insemination procedures with sperm from a stranger-donor. That agreement stated, in relevant part:

"It is further agreed that [at] the moment of conception the husband hereby accepts the act as his own, and agrees:

1. That such child or children so produced are his own legitimate child or children and are heirs of his body; and

2. That he hereby completely waives forever any right which he might have to disclaim such child or children as his own; and
3. That such child or children so procedure [sic] are, and shall be considered to be, in all respects including descent of property, child or children of his own body.” (Emphasis added.)

That agreement was signed by petitioner as “husband,” respondent as “wife,” and the physician who performed the artificial insemination procedure.

**311 **55 This issue requires us to determine whether section 3 of the Parentage Act includes transsexual males who have signed artificial insemination agreements as husbands in an invalid same-sex marriage. We find that it does not.


[8] It is clear from reading the statute in question that the legislature intended that this statute apply to “husbands” and “wives” as those terms are ordinarily and popularly understood. Petitioner and respondent signed the agreement as “husband” and “wife.” However, inasmuch as we have upheld the trial court’s determination that petitioner was not a “husband” and respondent was not a “wife” due to the invalidity of their marriage, we are compelled to find that the agreement is also invalid. Furthermore, the physician who performed the artificial insemination procedure failed to comply with the statute in that he did not certify the signatures and the date of the insemination. Under the statute, the physician is required to certify the date of insemination in order to make the consent valid. 750 ILCS 45/5(a) (West 2002). In this case, the only date that appears on the consent form is April 18, 1991, but the record does not disclose the actual date of insemination because it was never certified by the physician. Respondent testified that the first procedure did not occur until approximately one month after the April 18, 1991, agreement was signed, and that she did not become pregnant until after the sixth procedure, some several months later. We find that the artificial insemination agreement did not comport with the statute and was, therefore, invalid on those grounds as well. See *In re Marriage of Witbeck-Wildhagen*, 281 Ill. App. 5d 502, 506, 217 Ill. Dec. 329, 667 N.E.2d 122 (1996) (wherin the Fourth District stated in *dicta* that the husband’s written consent is required each time the wife is to undergo an insemination procedure).

Petitioner further argues that even if the agreement is held to be invalid, section 5 of the Illinois Parentage Act of 1984 (Parentage Act of 1984) (750 ILCS 45/5 (West 2002)) grants a presumption of parenthood, and that a child born from artificial insemination to two married parents retains his right to parentage with both parents even if the marriage is subsequently held invalid.

Section 5 of the Parentage Act of 1984 states in relevant part:

“(a) A man is presumed to be the natural father of a child if:

(1) he and the child’s natural mother are or have been married to each other, even though the marriage is or could be declared invalid, and the child is born or conceived during such marriage;

*952 (2) after the child’s birth, he and the child’s natural mother have married each other, even though the marriage is or could be declared invalid, and he is named, with his written consent, as the child’s father on the child birth certificate[.]” 750 ILCS 45/5(a)(1), (a)(2) (West 2002).

**312 **56 [9] While we agree with petitioner’s interpretation of the statute, we must conclude that it does not apply to him. That section, which confers a presumption on a “man” to be the natural father of a child even after a marriage has been declared invalid, is based on the premise that the parties who are involved are a man and a woman. As we have previously determined, petitioner is not a man within the meaning of the statute, and that, therefore, the statute does not apply.

Petitioner further maintains that even if we find
that the Parentage Act, the Parentage Act of 1984, and the Marriage Act do not apply, he can still be considered a legal parent under common law. In support of his argument, he relies on In re Parentage of M.J., 203 Ill.2d 526, 277 Ill. Dec. 329, 787 N.E.2d 144 (2003). In that case, petitioner and respondent, a woman and a man respectively, were never married to each other but agreed to have a child through artificial insemination because respondent was sterile. They did not sign an artificial insemination consent agreement, but the respondent made oral promises to petitioner that he would always provide financial support for the child, and he paid for the procedure. Petitioner subsequently gave birth to twins, and the respondent, as promised, provided financial support for the children until their relationship ended after she discovered that he was married to someone else. At that time, respondent withdrew his financial support, and petitioner filed a three-count complaint to establish paternity and impose a support obligation for the benefit of their children. The first count alleged the breach of an oral agreement, and the second count alleged promissory estoppel. Both counts alleged that respondent made an offer to petitioner that he would treat the children as his own and provide financial support for them and that these representations she never would have undergone artificial insemination. The third count sought a request for a declaration of paternity and establishment of child support pursuant to the Parentage Act of 1984. Our supreme court held that because written consent is a prerequisite for invoking the protections of the Parentage Act, plaintiff could not maintain an action under it. However, the court also found that there was nothing in the Parentage Act of 1984 that prohibited common law actions to establish parental responsibility. M.J., 203 Ill.2d at 531, 277 Ill. Dec. 329, 787 N.E.2d 144.

[10] While M.J. does stand for the proposition that an action can be brought under common law theories for financial support, it does not stand for the proposition that questions of paternity or custody may be brought under common law theories of breach of contract and promissory estoppel. In fact, the plaintiff in M.J. did not prevail on her request for a declaration of paternity in count III of her complaint, as the court held that such an issue can only be addressed under the Parentage Act of 1984. We read M.J. to stand for the proposition that while matters of financial support and parental responsibility may be brought under common law theories of breach of an oral contract and promissory estoppel, questions of paternity and custody must still be brought under the Parentage Act of 1984. Since we have previously determined that petitioner lacks standing under the Parentage Act of 1984, this argument must fail.

Petitioner also contends that he should be declared the de facto parent based upon his long, loving and close relationship with the minor child who has always known him as his “Daddy.”

[11] In In re Visitation With C.B.L., 309 Ill.App.3d 888, 243 Ill.Dec. 284, 723 N.E.2d 316 (1999), the petitioner, who had **313 ***57 engaged in a long-term lesbian relationship with respondent, who had given birth to the minor as a result of artificial insemination, sought an order granting her visitation with the minor child pursuant to the Marriage Act. She argued that she had alleged facts in her petition sufficient to establish her standing as a common law de facto parent or as an individual in loco parentis to the minor child. C.B.L., 309 Ill.App.3d at 889-90, 243 Ill.Dec. 284, 723 N.E.2d 316. On appeal, she abandoned her contention that the allegations within her petition were sufficient to establish her standing under the Marriage Act and contended only that they were sufficient to provide her standing as a common law de facto parent or as an individual in loco parentis to C.B.L., C.B.L., 309 Ill.App.3d at 890, 243 Ill.Dec. 284, 723 N.E.2d 316. This court held that the Marriage Act superseded and supplanted the common law of visitation in Illinois and that, therefore, any standing for visitation must be found solely within that Act. C.B.L., 309 Ill.App.3d at 891, 243 Ill.Dec. 284, 723 N.E.2d 316. Since petitioner conceded her lack of standing under the Act, her petition lacked merit. C.B.L., 309 Ill.App.3d at 894, 243 Ill.Dec. 284, 723 N.E.2d 316.

The court in C.B.L. further stated:

“Finally, this court is not unmindful of the fact that our evolving social structures have created nontraditional relationships. This court, however, has no authority to ignore the manifest intent of our General Assembly. Who shall have standing to petition for visitation with a minor is an issue of complex social significance. Such an issue demands a comprehensive legislative solution. That solution is provided, by our General Assembly, within [the Marriage Act].” C.B.L., 309 Ill.App.3d
at 894-95, 243 Ill.Dec. 284, 723 N.E.2d 316.

Similarly, in the instant case, petitioner's standing to seek full *954 care and custody of the minor child must be found solely within the Marriage Act, the Parentage Act, or the Parentage Act of 1984. Our determination that he lacks such standing under those acts is dispositive of the issue.

Finally, petitioner argues that respondent should be barred from contesting his paternity by the doctrines of equitable estoppel and laches and the applicable statute of limitations under the Parentage Act of 1984.

[12][13] Estoppel arises when a party, by his words or conduct, intentionally or through culpable negligence, induces reasonable reliance by another on his representations and thus leads the other, as a result of that reliance, to change his position to his detriment. Zink v. Maple Investment & Development Corp., 247 Ill.App.3d 1032, 1039, 187 Ill.Dec. 548, 617 N.E.2d 1269 (1993). The purpose of equitable estoppel is to prevent fraud and injustice. Payne v. Mill Race Inn, 152 Ill.App.3d 269, 276, 105 Ill.Dec. 324, 504 N.E.2d 193 (1987). Equitable estoppel bars a wife from attacking the validity of a joint custody agreement that calls for shared custody of the child and for the husband to pay child support when the wife entered into the agreement, accepted child support and allowed the husband to visit the child, which caused the husband to act as the child's father and to anticipate that his parent-child relationship would continue. See In re Marriage of Schlam, 271 Ill.App.3d 788, 794, 207 Ill.Dec. 889, 648 N.E.2d 345 (1993).

[14] In the instant case, equitable estoppel cannot apply because no action on the part of respondent can confer standing on petitioner to seek custody. The issue here is not a joint custody agreement but whether the parties' marriage complies with Illinois law or is in contravention of it. Inasmuch as the parties' marriage was void ab initio, there is nothing in the law which prohibits respondent from raising **314 ***58 that invalidity. It would be illogical to hold that because petitioner and respondent agreed to enter into a marriage prohibited under Illinois law, the state is now obliged to recognize that illegal union and all that flows therefrom simply because respondent participated and acquiesced in it.

[15][16] Laches is the neglect or omission on the part of a complainant to assert a right, taken in conjunction with a lapse of time and other circumstances causing prejudice to any adverse party. Lincoln-Way Community High School District 210 v. Village of Frankfort, 51 Ill.App.3d 602, 611, 9 Ill.Dec. 884, 367 N.E.2d 318 (1977). The necessary elements of laches are delay and prejudice. Lincoln-Way, 51 Ill.App.3d at 611, 9 Ill.Dec. 884, 367 N.E.2d 318. The statute of limitations found in the Parentage Act of 1984 to which petitioner refers is found in section B. 750 ILCS 45/8 (West 2002). That section provides that a party who brings an action to declare the nonexistence of the parent and child relationship shall be barred if brought later than 2 years after the petitioner obtains knowledge of relevant facts. 750 ILCS 45/8(a)(3) (West 2002).

[17] Petitioner cannot avail himself of any of these theories because he, not respondent, has brought this action. Once the action was filed, respondent could raise whatever defenses she deemed appropriate or legally sound. We know of no case law which stands for the proposition that a respondent is estopped from raising defenses due to laches or the statute of limitations. Therefore, petitioner's arguments under estoppel, laches and the statute of limitations must fail.

The minor child argues that he was the intended third-party beneficiary of the contract entered into between petitioner and respondent and, therefore, has a right to sue under that contract even though he is never a party to it.

[18][19][20] A third-party beneficiary may sue under a contract even when not a party to it, provided the benefit of the contract is directed to him, as opposed to being merely incidental. Gallagher Corp. v. Russ, 309 Ill.App.3d 192, 190-200, 242 Ill.Dec. 326, 721 N.E.2d 605 (1999). It must appear from the language of the contract when properly construed that the contract was made for the direct benefit of the third person and that the benefit was not merely incidental. Midwest Concrete Products Co. v. La Salle National Bank, 94 Ill.App.3d 394, 396, 49 Ill.Dec. 968, 418 N.E.2d 988 (1981). The argument is that the minor child is the third-party beneficiary under the artificial insemination agreement, particularly in light of the fact that respondent entered into it and ac-
knowledged that the child would be considered petitioner's heir. However, since we have already determined that the agreement is invalid, there can be no contract to enforce, and the minor child cannot be construed as a third-party beneficiary to an invalid, non-existent contract.

211 Additionally, the Public Guardian argues that the trial court's decision violates the minor child's right to equal protection of the laws under both the Illinois and United States Constitutions. He maintains that the child, as an artificially inseminated child born into an invalid same-sex marriage, is being denied parentage while almost all other children are not.

The Public Guardian cites Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972), where the United States Supreme Court held that all parents, whether married or unmarried, male or female, are constitutionally entitled to a hearing on their fitness before their children could be removed from their custody. Illinois law had previously presumed that unwed fathers were unsuitable and neglectful parents, which the Supreme Court found violated due process. **315***Stanley, 405 U.S. at 650, 92 S.Ct. at 1212, 31 L.Ed.2d at 551. The Supreme Court, however, has never determined whether a child has a *956 liberty interest symmetrical with that of a natural parent in maintaining his current relationship. Michael H. v. Gerald D., 491 U.S. 110, 130, 109 S.Ct. 2333, 2346, 105 L.Ed.2d 91, 110-11 (1989). Attempts to assert such a right on behalf of children who have become psychologically attached to a nonparent have not met with success in other jurisdictions. See, e.g., In re Clausen, 442 Mich. 648, 502 N.W.2d 649 (1993). Moreover, the Illinois Supreme Court has specifically held that no such liberty interest exists with respect to a child's psychological attachment to a nonbiological parent. See In re Petition of Kirchner, 164 Ill.2d 468, 208 Ill.Dec. 268, 649 N.E.2d 324 (1995). Accordingly, the Public Guardian's argument here must fail.

Both petitioner and the Public Guardian were granted permission to cite additional authority subsequent to oral argument. They cited the recent supreme court case of People ex rel Department of Public Aid v. Smith, 212 Ill.2d 389, 289 Ill.Dec. 1, 818 N.E.2d 1204 (2004), in support of their position that a father's acknowledgment of paternity is conclusive under the Parentage Act of 1984. In that case, two days after the child was born, Smith executed a voluntary acknowledgment of paternity. Subsequently, Smith learned through DNA testing that the child was not his biological child. Smith then brought an action to declare the nonexistence of the parent-child relationship under the Parentage Act of 1984. The State's motion to dismiss the action was granted by the trial court, which this court reversed. The supreme court affirmed the trial court's holding, finding that under section 6(d) of the Parentage Act of 1984 (750 ILCS 45/6(d) (West 2002)), a signed acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact. Smith, 212 Ill.2d at 405, 289 Ill.Dec. 1, 818 N.E.2d 1204. The court found that Smith's acknowledgment of paternity was not rebuttable. Smith, 212 Ill.2d at 406, 289 Ill.Dec. 1, 818 N.E.2d 1204.

Petitioner and the Public Guardian maintain that Smith supports their contention that respondent's acknowledgment of petitioner's paternity in the artificial insemination agreement is conclusive. We disagree and, therefore, reject their argument based upon our previous determination that the artificial insemination agreement was invalid since petitioner has never been a husband within the meaning of the statute.

Accordingly, based upon the foregoing analysis, the judgment of the circuit court is affirmed.

Affirmed.

KARNEZIS, P.J., and HARTMAN, J., concur.

III. App. 1 Dist., 2005.
In re Marriage of Simmons
355 III.App.3d 942, 825 N.E.2d 303, 292 Ill.Dec. 47

END OF DOCUMENT
In the
United States Court of Appeals
For the Seventh Circuit

Nos. 10-2339 & 10-2466
ANDREA FIELDS, et al.,

Plaintiffs-Appellees,
Cross-Appellants,

v.

JUDY P. SMITH, et al.,

Defendants-Appellants,
Cross-Appellees.

Appeals from the United States District Court
for the Eastern District of Wisconsin.
No. 2:06-cv-00112-CNC—Charles N. Clevert, Jr., Chief Judge.

ARGUED FEBRUARY 7, 2011—DECIDED AUGUST 5, 2011

Before ROVNER and WOOD, Circuit Judges, and
GOTTSCHELL, District Judge.*

GOTTSCHELL, District Judge. In this appeal, we are
asked to review the decision of the district court invalidating a Wisconsin state statute which prohibits the

* The Honorable Joan B. Gottschall, United States District
Judge for the Northern District of Illinois, sitting by designation.
Wisconsin Department of Corrections ("DOC") from providing transgender inmates with certain medical treatments.\(^1\) The Inmate Sex Change Prevention Act ("Act 105") provides in relevant part:

(a) In this subsection:

1. "Hormonal therapy" means the use of hormones to stimulate the development or alteration of a person's sexual characteristics in order to alter the person's physical appearance so that the person appears more like the opposite gender.

2. "Sexual reassignment surgery" means surgical procedures to alter a person's physical appearance so that the person appears more like the opposite gender.

(b) The [Wisconsin Department of Corrections] may not authorize the payment of any funds or the use of any resources of this state or the payment of any federal funds passing through the state treasury to provide or to facilitate the provision of hormonal therapy or sexual reassignment surgery . . . .

2005 Wis. Act 105, codified at Wis. Stat. § 302.386(5m) (2010). The district court concluded that this provision violates the Eighth Amendment's ban on cruel and unusual punishment and the Fourteenth Amendment's

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\(^1\) A group of medical and mental health professionals sought leave from the court to submit a brief as amici curiae. The motion is granted.
Equal Protection Clause. Defendants, various DOC officials, now appeal.

I

A number of DOC inmates filed this lawsuit as a putative class action in the Eastern District of Wisconsin on behalf of all current and future DOC inmates with "strong, persistent cross-gender identification." The district court denied plaintiffs' motion for class certification, but permitted the case to proceed to trial on the individual claims of three plaintiffs.

The three plaintiffs—Andrea Fields, Matthew Davison (also known as Jessica Davison), and Vankemah Moaton—are male-to-female transsexuals. According to stipulated facts, each has been diagnosed with Gender Identity Disorder ("GID"). GID is classified as a psychiatric disorder in the DSM-IV-TR, the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. Individuals with GID identify strongly with a gender that does not match their physical sex characteristics. The condition is associated with severe psychological distress. Prior to the passage of Act 105, each of the plaintiffs had been diagnosed by DOC physicians with GID and had been prescribed hormones.

After a trial in which both sides presented expert testimony about GID, its treatment, and its potential effects on prison security, the district court ruled in favor of plaintiffs. The court ruled that Act 105 was unconstitu-
tional, both as applied and on its face, under the Eighth and Fourteenth Amendments. The district court ultimately issued an injunction barring defendants from enforcing Act 105. We need not recount all the evidence presented at trial—the district court's 40-page opinion thoroughly describes the trial testimony, see *Fields v. Smith*, 712 F. Supp. 2d 830 (E.D. Wis. 2010)—but a brief review of the district court's critical factual findings is warranted.

The district court credited much of the testimony from plaintiffs' witnesses, including three experts in the treatment of GID. Plaintiffs' experts testified that, collectively, they had treated thousands of patients with GID and published numerous peer-reviewed articles and books on the subject. One expert had specifically studied transsexuals in the correctional setting. These experts explained that GID can cause an acute sense that a person's body does not match his or her gender identity. Even before seeking treatment and from an early age, patients will experience this dysphoria and may attempt to conform their appearance and behavior to the gender with which they identify.

The feelings of dysphoria can vary in intensity. Some patients are able to manage the discomfort, while others become unable to function without taking steps to correct the disorder. A person with GID often experiences severe anxiety, depression, and other psychological disorders. Those with GID may attempt to commit suicide or to mutilate their own genitals.
The accepted standards of care dictate a gradual approach to treatment beginning with psychotherapy and real life experience living as the opposite gender. For some number of patients, this treatment will be effective in controlling feelings of dysphoria. When the condition is more severe, a doctor can prescribe hormones, which have the effect of relieving the psychological distress. Hormones also have physical effects on the body. For example, males may experience breast development, relocation of body fat, and softening of the skin. In the most severe cases, sexual reassignment surgery may be appropriate. But often the use of hormones will be sufficient to control the disorder.

When hormones are withdrawn from a patient who has been receiving hormone treatment, severe complications may arise. The dysphoria and associated psychological symptoms may resurface in more acute form. In addition, there may be severe physical effects such as muscle wasting, high blood pressure, and neurological complications. All three plaintiffs in this case experienced some of these effects when DOC doctors discontinued their treatment following the passage of Act 105.²

² Defendants began reducing plaintiffs' hormone levels on January 12, 2006; on January 27, 2006, the district court granted a preliminary injunction barring defendants from continuing to withdraw plaintiffs' hormone therapy and ordering defendants to return plaintiffs to their previous hormone levels.
Plaintiffs also called Dr. David Burnett, the DOC's Medical Director, and Dr. Kevin Kallas, the DOC Mental Health Director, to testify at trial. These officials explained that, prior to the enactment of Act 105, hormone therapy had been prescribed to some DOC inmates, including plaintiffs. DOC policies did not permit inmates to receive sex reassignment surgery. Drs. Kallas and Burnett served on a committee of DOC officials that evaluated whether hormone therapy was medically necessary for any particular inmate. Inmates are not permitted to seek any medical treatment outside the prison, regardless of their ability to pay. The doctors testified that they could think of no other state law or policy, besides Act 105, that prohibits prison doctors from providing inmates with medically necessary treatment.

II

We evaluate both the district court's grant of injunctive relief and the scope of that relief for abuse of discretion. Knapp v. Nw. Univ., 101 F.3d 473, 478 (7th Cir. 1996); see Brown v. Plata, 131 S.Ct. 1910, 1957 (2011) (Scalia, J., dissenting) (noting that under the Prison Litigation Reform Act ("PLRA"), "when a district court enters a new decree with new benchmarks, the selection of those benchmarks is . . . reviewed under a deferential, abuse-of-discretion standard of review"); Russian Media Group, LLC v. Cable Am., Inc., 598 F.3d 302, 307 (7th Cir. 2010) ("[T]he appropriate scope of the injunction is left to the district court's sound discretion."); Thomas v. Bryant, 614 F.3d 1288, 1321
Nos. 10-2339 & 10-2466

(11th Cir. 2010) (applying abuse of discretion standard to evaluate scope of injunction in conformity with PLRA); Crawford v. Clarke, 578 F.3d 39, 43 (1st Cir. 2009) (holding that district court did not abuse its discretion in awarding system-wide relief under the PLRA). The court’s factual findings are reviewed for clear error, and any legal determinations are reviewed de novo. Knapp, 101 F.3d at 478.

"Prison officials violate the Eighth Amendment’s pro-
scription against cruel and unusual punishment when
they display 'deliberate indifference to serious medical
needs of prisoners.'" Greeno v. Daley, 414 F.3d 645, 652-53
(7th Cir. 2005) (quoting Estelle v. Gamble, 429 U.S. 97, 104
(1976)). In this case, the district court held that plain-
tiffs suffered from a serious medical need, namely
GID, and that defendants acted with deliberate indif-
fERENCE in that defendants knew of the serious medical
need but refused to provide hormone therapy because
of Act 105. Defendants do not challenge the district
court’s holding that GID is a serious medical condition.
They contend that Act 105 is constitutional because the
state legislature has the power to prohibit certain
medical treatments when other treatment options are
available. And defendants argue that Act 105 is justified
by a legitimate need to ensure security in state prisons.

Defendants rely primarily on two Seventh Circuit
decisions which addressed constitutional challenges to
refusals to provide treatment for gender dysphoria or
transsexualism. Over twenty-four years ago, in Meriwether
v. Faulkner, 821 F.2d 408 (7th Cir. 1987), this court re-
versed the dismissal of a complaint which alleged that
the plaintiff, who had previously been taking hormones, was denied all treatment for her gender dysphoria upon entering prison. The court held that the plaintiff stated a claim that transsexualism was a serious medical need and that prison officials acted with deliberate indifference in refusing all treatment. The court noted in dicta that “it is important to emphasize, however, that she does not have a right to any particular type of treatment, such as estrogen therapy which appears to be the focus of her complaint.” *Id.* at 413.

Ten years later, in *Maggert v. Hanks*, 131 F.3d 670 (7th Cir. 1997), this court, in two brief paragraphs, upheld a decision granting summary judgment on a similar deliberate indifference claim where the plaintiff did not come forward with any evidence to rebut defendants’ expert witness, who testified that plaintiff did not suffer from gender dysphoria. The court’s opinion proceeded to address “a broader issue, having to do with the significance of gender dysphoria in prisoners’ civil rights litigation.” *Id.* at 671. The court commented, again in dicta, that the Eighth Amendment does not require the provision of “esoteric” treatments like hormone therapy and sexual reassignment surgery which are “protracted and expensive” and not generally available to those who are not affluent. *Id.* at 671-72. A prison would be required to provide some treatment for gender dysphoria, but not necessarily “curative” treatment because the Eighth Amendment requires only minimum health care for prison inmates. *Id.* at 672.
The court’s discussion of hormone therapy and sex reassignment surgery in these two cases was based on certain empirical assumptions—that the cost of these treatments is high and that adequate alternatives exist. More than a decade after this court’s decision in Maggert, the district court in this case held a trial in which these empirical assumptions were put to the test. At trial, defendants stipulated that the cost of providing hormone therapy is between $300 and $1,000 per inmate per year. The district court compared this cost to the cost of a common antipsychotic drug used to treat many DOC inmates. In 2004, DOC paid a total of $2,300 for hormones for two inmates. That same year, DOC paid $2.5 million to provide inmates with quetiapine, an antipsychotic drug which costs more than $2,500 per inmate per year. Sex reassignment surgery is significantly more expensive, costing approximately $20,000. However, other significant surgeries may be more expensive. In 2005, DOC paid $37,244 for one coronary bypass surgery and $32,897 for one kidney transplant surgery. The district court concluded that DOC might actually incur greater costs by refusing to provide hormones, since inmates with GID might require other expensive treatments or enhanced monitoring by prison security.³ Fields, 712 F. Supp. 2d at 863. In fact, at oral argument before this court, counsel for defendants disclaimed any argument that Act 105 is justified by cost.

³ Plaintiff Moaton, for example, experienced suicidal ideation after DOC officials began withdrawing hormone treatments. Fields, 712 F. Supp. 2d at 835.

More importantly here, defendants did not produce any evidence that another treatment could be an adequate replacement for hormone therapy. Plaintiffs' witnesses repeatedly made the point that, for certain patients with GID, hormone therapy is the only treatment that reduces dysphoria and can prevent the severe emotional and physical harms associated with it. Although DOC can provide psychotherapy as well as antipsychotics and antidepressants, defendants failed to present evidence rebutting the testimony that these treatments do nothing to treat the underlying disorder. Defendants called their own expert to speak about GID: Dr. Daniel Claiborn, a Ph.D. in psychology who estimated he has treated only about fifty clients with GID over a period of twenty years in his private practice. Dr. Claiborn provided no testimony about the appropriate treatment for plaintiffs. He offered his opinion that GID is not properly characterized as a psychological disorder because a person with GID does not typically suffer from an impairment in psychological functions. However, defendants have now conceded that GID is a serious medical condition. Dr. Claiborn's testimony does not support the assertion that plaintiffs can be effectively treated without hormones.

It is well established that the Constitution's ban on cruel and unusual punishment does not permit a state to deny effective treatment for the serious medical needs of
prisoners. The Supreme Court articulated this principle in *Estelle v. Gamble*:

An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical “torture or a lingering death,” the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose. . . . We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the “unnecessary and wanton infliction of pain,” proscribed by the Eighth Amendment.

429 U.S. at 103-04 (citations omitted). Surely, had the Wisconsin legislature passed a law that DOC inmates with cancer must be treated only with therapy and pain killers, this court would have no trouble concluding that the law was unconstitutional. Refusing to provide effective treatment for a serious medical condition serves no valid penological purpose and amounts to torture. *Id.*; see also *Roe v. Elyea*, 631 F.3d 843, 861-63 (7th Cir. 2011) (upholding verdict for plaintiff that prison policy on treatment of Hepatitis C was deliberately indifferent); *Kelley v. McGinnis*, 899 F.2d 612, 616 (7th Cir. 1990) (reversing dismissal of complaint alleging that prison provided inadequate treatment for inmate’s chronic foot problems). Although Act 105 permits DOC to provide plaintiffs with *some* treatment, the evidence at
trial indicated that plaintiffs could not be effectively treated without hormones.

Defendants point to the Supreme Court's decision in Gonzales v. Carhart, 550 U.S. 124 (2007), for the proposition that a legislature may constitutionally limit the discretion of physicians by outlawing a particular medical procedure. In Carhart, the Court upheld the constitutionality of the Partial-Birth Abortion Ban Act of 2003 which outlawed a particular procedure used to perform late-term abortions. The Court noted the existence of "medical uncertainty" regarding whether the banned procedure was more dangerous than alternative procedures. Id. at 163-64. Because safe abortion alternatives to the prohibited procedure appeared to exist, the court turned away the facial challenge to the law. Id. at 164.

Carhart is not helpful to defendants in this case because they did not present any medical evidence that alternative treatments for GID are effective. As defendants point out, some medical uncertainty remains as to the causes of GID, but there was no evidence of uncertainty about the efficacy of hormone therapy as a treatment. Just as the legislature cannot outlaw all effective cancer treatments for prison inmates, it cannot outlaw the only effective treatment for a serious condition like GID.

Defendants argue that even if application of Act 105 to plaintiffs violates the Eighth Amendment, the district court erred in sustaining a facial challenge to the law. Act 105 bans treatment to all prisoners, even those for
whom hormones and surgery are not medically necessary. A facial challenge to the constitutionality of a law can succeed only where plaintiffs can “‘establish that no set of circumstances exists under which the Act would be valid.’” Doe v. Heck, 327 F.3d 492, 528 (7th Cir. 2003) (quoting United States v. Salerno, 481 U.S. 739, 745 (1987)). Nonetheless, “[t]he proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.” Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 894 (1992). The district court, in this case, found that DOC doctors prescribe hormones only when the treatment is medically necessary. Fields, 712 F. Supp. 2d at 866. Thus, the court correctly concluded that Act 105 is irrelevant to inmates who are not diagnosed with severe GID and in medical need of hormones, and any application of Act 105 would necessarily violate the Eighth Amendment.

Defendants have also argued that Act 105 is justified by the state’s interest in preserving prison security. Defendants’ security expert, Eugene Atherton, testified that more feminine male inmates become targets for sexual assault in prisons. Because hormone therapy alters a person’s secondary sex characteristics such as breast size and body hair, defendants argue that hormones feminize inmates and make them more susceptible to inciting prison violence. But the district court rejected this argument, noting that the evidence showed transgender inmates may be targets for violence even without hormones. Atherton himself, in his deposition, testified that it would be “an incredible stretch” to conclude that banning the use of hormones could prevent
sexual assaults. *Id.* at 868. In the Colorado Department of Corrections, where Atherton worked for many years, the state had a policy of providing necessary hormones to inmates with GID. Atherton testified that this policy was reasonable and had been implemented effectively in Colorado.

Defendants cite *Whitley v. Albers* for the proposition that "'[p]rison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.'" 475 U.S. 312, 321-22 (1986) (quoting *Bell v. Wolfish*, 441 U.S. 520, 547 (1979)). But deference does not extend to "actions taken in bad faith and for no legitimate purpose." *Id.* at 322. The district court did not abuse its discretion in concluding that defendants' evidence failed to establish any security benefits associated with a ban on hormone therapy. The legislators who approved Act 105 may have honestly believed they were improving prison security, but courts "retain[ ] an independent constitutional duty to review factual findings where constitutional rights are at stake." *Carhart*, 550 U.S. at 165.

Finally, defendants contend that the district court's injunction violates the PLRA, 18 U.S.C. § 3626(a), because it enjoins Act 105 in its entirety.4 They argue that

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4 The PLRA provides, in part:

Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct (continued...
plaintiffs have never demonstrated a need for sex reassignment surgery, which the law also prohibits. For their part, plaintiffs argue that defendants waived this argument by failing to raise it before the district court. In fact, the record establishes an admission, not a waiver. On June 9, 2010 plaintiffs requested that the district court supplement its findings relating to the PLRA’s so-called “need-narrowness-intrusiveness” standard. At a subsequent status conference, the court asked defendants’ counsel not once, but twice, “whether or not the Defense believes the order as tendered . . . is as narrow as is required”; counsel replied that it was. (See Pls.’ App. 19.) As a practical matter, then, defendants are precluded from making this argument now.

Regardless, the district court’s orders establish that the court evaluated the record as a whole and identified evidence that fully supports the scope of the injunctive relief granted. See Armstrong v. Schwarzenegger, 622 F.3d

(...continued)

the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

1058, 1070 (9th Cir. 2010) ("[T]he language of the PLRA does not suggest that Congress intended a provision-by-provision explanation of a district court's findings . . . . [T]he statutory language [means] that the courts must do what they have always done when determining the appropriateness of the relief ordered: consider the order as a whole."); *Gomez v. Vernon*, 255 F.3d 1118, 1129 (9th Cir. 2001) (the PLRA “has not substantially changed the threshold findings and standards required to justify an injunction”); *Smith v. Ark. Dep't of Corr.*, 103 F.3d 637, 647 (8th Cir. 1996) (same); *Williams v. Edwards*, 87 F.3d 126, 133 n. 21 (5th Cir. 1996) (same). In the district court's May 13, 2010 memorandum order, the court expressly addressed both hormone therapy and sex reassignment surgery. There, the court stated that:

The defendants acknowledge that Act 105 removes even the consideration of hormones or surgery for inmates with gender issues and that the DOC halted evaluations of inmates with GID for possible administration of hormone therapy because of the Act. However, in determining whether a facial challenge to Act 105 may succeed here, the defendants submit that the court must take into account all inmates in DOC custody for whom hormone therapy or sexual reassignment surgery would be considered as treatment for gender issues. If that is done, they maintain that there are circumstances where Act 105 may be applied without violating the Constitution, and that, as a result, the plaintiffs' facial challenge
to the law must fail. Unfortunately, the defendants do not support this point.

In certain cases, as with the plaintiffs in this case, the effect of Act 105 is to withdraw an ongoing course of treatment, the result of which has negative medical consequences. In other cases, the effect of Act 105 is to prevent DOC medical personnel from evaluating inmates for treatment because such evaluation would be futile in light of Act 105’s ban on the treatment they may determine to be medically necessary for the health of the inmate.

In this case, Act 105 bars the use of hormones “to stimulate the development or alteration of a person’s sexual characteristics in order to alter the person’s physical appearance so that the person appears more like the opposite gender,” as well as sexual reassignment surgery “to alter a person’s physical appearance so that the person appears more like the opposite gender.” Wis. Stat. § 302.386(5m)(a). The statute applies irrespective of an inmate’s serious medical need or the DOC’s clinical judgment if at the outset of treatment, it is possible that the inmate will develop the sexual characteristics of the opposite gender. The reach of this statute is sweeping inasmuch as it is applicable to any inmate who is now in the custody of the DOC or may at any time be in the custody of the DOC, as well as any medical profes-
sional who may consider hormone therapy or gender reassignment as necessary treatment for an inmate.

*Fields*, 712 F. Supp. 2d at 865-67. The district court’s June 22, 2010 “additional findings” further support its conclusion that the statute is facially invalid. There, the court found that the injunction was “narrowly tailored in that enjoining the enforcement of [Act 105] prohibits only unconstitutional applications of the statute[,] which this court has found to be unconstitutional any time it is applied,” and the injunction extended no further than necessary to correct the Eighth Amendment violation because “enjoining all applications of [Act 105] is necessary to prevent constitutional violations.” The district court also specifically referenced its prior finding that the constitutional violation stemmed from “removing ‘even the consideration of hormones or surgery.’” (See App. 174-75.) We agree. Evaluating the record as a whole, the district court did not abuse its discretion in enjoining the entirety of Act 105.

Having determined that the district court properly held that Act 105 violates the Eighth Amendment, both on its face and as applied to plaintiffs, we need not address the district court’s alternate holding that the law violates the Equal Protection Clause. Plaintiffs have asserted a conditional cross-appeal of the district court’s denial of class certification. But because we have upheld the district court’s injunction, we also do not address the cross-appeal.
III

The judgment of the district court is affirmed.
Supreme Court of Illinois.
The CITY OF CHICAGO, Appellee,
v.
Wallace WILSON et al., Appellants.

No. 49229.

Defendants were convicted in Circuit Court, Cook County, David J. Shields, J., of violating a Chicago ordinance prohibiting a person from wearing clothing of the opposite sex with intent to conceal his or her sex, and the Appellate Court, 44 Ill. App.3d 620, 2 Ill.Dec. 894, 357 N.E.2d 1337, affirmed. The Supreme Court, Thomas J. Moran, J., held that the ordinance in question was unconstitutional as applied to defendants.

Judgments reversed and cause remanded with directions.

Ward, C. J., dissented and filed opinion in which Underwood and Ryan, JJ., joined.

West Headnotes

111 Constitutional Law 92 €1225

92 Constitutional Law
92XVI Constitutional Rights in General
92XVI(B) Particular Constitutional Rights
92k1079 k. Personal Liberty. Most Cited Cases
(Formerly 92k83(1.5), 92k83(1))

City ordinance prohibiting wearing of clothing of opposite sex with intent to conceal wearer's sex was unconstitutional as applied to male defendants who contended that, as part of psychiatric therapy and preparation for sex reassignment operation, they were required to wear female clothing and to adopt female life-style; as thus applied, ordinance impermissibly infringed defendants' constitutional liberty interests. S.H.A. ch. 1111/2, § 73-17(1)(d).

121 Constitutional Law 92 €1225

92 Constitutional Law
92X1 Right to Privacy
92X1(B) Particular Issues and Applications
92k1225 k. In General. Most Cited Cases
(Formerly 92k83(1.5), 92k82(6), 92k82)

Notion that state can regulate one's personal appearance, unconfined by any constitutional strictures whatsoever, is fundamentally inconsistent with values of privacy, self-identity, autonomy and personal integrity that constitution was designed to protect.

131 Municipal Corporations 268 €622

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k622 k. Prohibitory Ordinances. Most Cited Cases

Ordinance erecting total ban against cross-dressing in public was not justified as means of protecting citizens from being misled or defrauded, aiding in description and detection of criminals, preventing crimes in washrooms, or preventing inherently antisocial conduct contrary to accepted norms of society.
*527 **522 ***458 Wendy Meltzer and Thomas F. Geraghty, of Northwestern Legal Assistance Clinic, Chicago and David Goldberger, of American Civil Liberties Union, Chicago, for appellants.

*528 William R. Quinlan, Corp. Counsel, Chicago (Daniel Pascale and Mary Denise Cahill, Asst. Corp. Counsel, Chicago, of counsel), for appellee.

THOMAS J. MORAN, Justice.

Following a bench trial in the circuit court of Cook County, the defendants, Wallace Wilson and Kim Kimberley, were convicted of having violated section 192-8 of the Municipal Code of the city of Chicago (Code), which prohibits a person from wearing clothing of the opposite sex with the intent to conceal his or her sex. Each defendant was fined $100. The appellate court affirmed (44 Ill.App.3d 620, 2 Ill.Dec. 894, 357 N.E.2d 1337), and this court granted leave to appeal.

Defendants were arrested on February 18, 1974, minutes after they emerged from a restaurant where they had had breakfast. Defendant Wilson was wearing a black knee-length dress, a fur coat, nylon stockings and a black wig. Defendant Kimberley had a bouffant hair style and was wearing a pants suit, high-heeled shoes and cosmetic makeup. Defendants were taken to the police station and were required to pose for pictures in various stages of undress. Both defendants were wearing brassieres and garter belts; both had male genitals.

Prior to trial, defendants moved to dismiss the complaint on the grounds that section 192-8 was unconstitutional in that it denied them equal protection of the law and infringed upon their freedom of expression and privacy. This motion was denied.

**523 ***459 At trial, the defendants testified that they were transsexuals, and were, at the time of their arrests, undergoing psychiatric therapy in preparation for a sex reassignment operation. As part of this therapy, both defendants stated, they were required to wear female clothing and to adopt a female life-style. Kimberley stated *529 that he had explained this to the police at the time of his arrest. Both defendants said they had been transsexuals all of their lives and thought of themselves as females. The question of arrest is not an issue.

Section 192-8 of the Code provides:

"Any person who shall appear in a public place * * in a dress not belonging to his or her sex, with intent to conceal his or her sex, * * * shall be fined not less than twenty dollars nor more than five hundred dollars for each offense."

Defendants contend that section 192-8 is unconstitutionally vague, overly broad, and denies them equal protection under the law on account of sex. They argue that the section is overly broad, both on its face and as applied to them, in that it denies them freedom of expression protected by the first amendment and personal liberties protected by the ninth and fourteenth amendments of the United States Constitution.

The city asserts that section 192-8 is neither vague nor overly broad and that the section does not deny defendants equal protection under the law.

[1] We find that the above-cited section, as applied to defendants here, is unconstitutional, and in so doing we do not, therefore, reach the issues of vagueness and equal protection.

In Kelley v. Johnson (1976), 425 U.S. 238, 96 S.Ct. 1440, 47 L.Ed.2d 708, the Supreme Court was confronted with the question of whether one's choice of appearance was constitutionally protected from governmental infringement. At issue was an order promulgated by petitioner, the commissioner of police for Suffolk County, New York, which order established hair-grooming standards for male members of the police force. The court acknowledged that the due process clause of the Fourteenth Amendment “affords not only a procedural guarantee against deprivation of ‘liberty,’ but likewise protects substantive aspects of liberty against unconstitutional restrictions by the State.” (425 U.S. 238, 244, 96 S.Ct. 1440, 1444, 47 L.Ed.2d 708, 713.) The court observed, however, that its prior cases offered little, if any, guidance on whether the citizenry at large has some sort of liberty interest in matters of personal appearance. It assumed for purposes of its opinion that such did exist.

In determining the scope of that interest and the justification that would warrant its infringement, the court distinguished claims asserted by individuals of a uniformed police department from claims by the citizenry at large, noting that the distinction was “highly significant.” (425 U.S. 238, 245, 96 S.Ct. 1440, 1444, 47 L.Ed.2d 708, 714.) The court held that, in the context of the case before it, the burden rested with the respondent police officer to demonstrate that there was no rational connection between the regulation and the police department’s legitimate function of promoting safety of persons and property. After analyzing the need for uniformity and discipline within the ranks of the police department, the court concluded that the challenged order was rationally related to two legitimate objectives: first, “to make police officers readily recognizable to the members of the public,” and second, to foster the “esprit de corps which such similarity is felt to inculcate within the police force itself.” (425 U.S. 238, 248, 96 S.Ct. 1440, 1446, 47 L.Ed.2d 708, 716.) Mr. Justice Powell, who specially concurred, noted that “(w)hen the State has an interest in regulating one’s personal appearance * * * there must be a weighing of the degree of infringement of the individual’s liberty interest against the need **524 ***460 for the regulation.” *531425 U.S. 238, 249, 96 S.Ct. 1440, 1447, 47 L.Ed.2d 708, 717.

This court has long recognized restrictions on the State’s power to regulate matters pertinent to one’s choice of a life-style which has not been demonstrated to be harmful to society’s health, safety or welfare. E.g., People v. Fries (1969), 42 Ill.2d 446, 250 N.E.2d 149 (statute requiring the wearing of a motorcycle helmet held invalid); City of Chicago v. Drake Hotel Co. (1916), 274 Ill. 408, 113 N.E. 718 (ordinance prohibiting public dancing in restaurants held invalid); Town of Cortland v. Larson (1916), 273 Ill. 602, 113 N.E. 51 (ordinance prohibiting the private possession of liquor held invalid); City of Zion v. Behrens (1914), 262 Ill. 510, 104 N.E. 836 (ordinance prohibiting smoking in public parks and on public streets held invalid).

[2] In Haller Sign Works v. Physical Culture Training School (1911), 249 Ill. 436, 94 N.E. 920, a case which involved the regulation of billboards for aesthetic purposes, this court noted:

“The citizen has always been supposed to be free to determine the style of architecture of his house, the color of the paint that he puts thereon, the number and character of trees he will plant, the style and quality of the clothes that he and his family will wear, and it has never been thought that the Legislature could invade private rights so far as to prescribe the course to be pursued in these and other like matters, although the highly cultured may find on every street in every town and city many things that are not only open to criticism but shocking to the aesthetic taste.” (249 Ill. 436, 443, 94 N.E. 920, 923.)

The notion that the State can regulate one’s per-
senal appearance, unconfined by any constitutional strictures whatsoever, is fundamentally inconsistent with "values of privacy, self-identity, autonomy, and personal integrity that * * * the Constitution was designed to protect."  *532Kelley v. Johnson (1976), 425 U.S. 238, 251, 96 S.Ct. 1440, 1447, 47 L.Ed.2d 708, 718.  (Marshall, J., dissenting).

Finding that the Constitution provides an individual some measure of protection with regard to his choice of appearance answers only the initial issue. Resolution of the second issue is more difficult: to determine the circumstances under which the interest can be infringed. It is at this juncture that Kelley, and cases subsequent thereto, offer little guidance. With the exception of one Federal decision Williams v. Kleppe (1st Cir. 1976), 539 F.2d 803 all of the cases subsequent to Kelley have involved regulations set in the context of an organized governmental activity. (E.g., East Hartford Education Association v. Board of Education (2d Cir. 1977), 562 F.2d 838, 860-63.) Such circumstance is distinguished from that in which a regulation, as here, controls the dress of the citizens at large. This distinction, as noted in Kelley, is "highly significant."

Even though one's choice of appearance is not considered a "fundamental" right ( Richards v. Thurston (1st Cir. 1976), 424 F.2d 1281, 1284-85), the State is not relieved from showing some justification for its intrusion. As Kelley suggests, the degree of protection to be accorded an individual's choice of appearance is dependent upon the context in which the right is asserted. It is, therefore, incumbent upon the court to analyze both the circumstances under which the right is asserted and the reasons which the State offers for its intrusion.

[3] In this court, the city has asserted four reasons for the total ban against cross-dressing in public: (1) to protect citizens from being misled or defrauded; (2) to aid in the description and detection of criminals; (3) to prevent crimes in washrooms; and (4) to prevent inherently antisocial conduct which is contrary to the accepted norms of our society. The record, however, contains no evidence to support these reasons.

*533 If we assume that the ordinance is, in part, directed toward curbing criminal activity, the city has failed to demonstrate any justification for infringing upon the defendants' choice of public dress under the circumstances of this case.

**525 ***461 Both defendants testified that they are transsexuals and were, at the time of their arrest, undergoing psychiatric therapy in preparation for a sex-reassignment operation. (For a general discussion of the therapy required prior to sex-reassignment surgery, see Comment, M. P. v. J. T.: An Enlightened Perspective on Transsexualism, 6 Cap.U.L.Rev. 403, 407-10 (1977); Note, The Law and Transsexualism: A Faltering Response to a Conceptual Dilemma, 7 Conn.L.Rev. 288, 296 n. 28 (1975); Comment, Transsexualism, Sex Reassignment Surgery and the Law, 56 Cornell L.Rev. 963, 972-74 (1971) (wherein it is noted that cross-dressing is recommended as part of a sex-reassignment preoperative therapy program).) Neither of the defendants was engaged in deviate sexual conduct or any other criminal activity. Absent evidence to the contrary, we cannot assume that individuals who cross-dress for purposes of therapy are prone to commit crimes.

The city's fourth reason (as noted above) for prohibiting the defendants' choice of public dress is apparently directed at protecting the public morals. In its brief, however, the city has not articulated the manner in which the ordinance is designed to protect the public morals. It is presumably believed that cross-dressing in public is offensive to the general public's aesthetic preference. There is no evidence, however, that cross-dressing, when done as a part of a preoperative therapy program or otherwise, is, in and of itself, harmful to society. In this case, the aesthetic preference of society must be balanced against the individual's well-being.
Through the enactment of section 17(1)(d) of the Vital Records Act (Ill.Rev.Stat.1977, ch. 111/2, par. *534 73-17(1)(d)), which authorizes the issuance of a new certificate of birth following sex-reassignment surgery, the legislature has implicitly recognized the necessity and validity of such surgery. It would be inconsistent to permit sex-reassignment surgery yet, at the same time, impede the necessary therapy in preparation for such surgery. Individuals contemplating such surgery should, in consultation with their doctors, be entitled to pursue the therapy necessary to insure the correctness of their decision.

Inasmuch as the city has offered no evidence to substantiate its reasons for infringing on the defendants' choice of dress under the circumstances of this case, we do not find the ordinance invalid on its face; however, we do find that section 192-8 as applied to the defendants is an unconstitutional infringement of their liberty interest. The judgments of the appellate court and the circuit court are reversed and the cause is remanded to the circuit court with directions to dismiss.

Judgments reversed; cause remanded, with directions.

WARD, Chief Justice, dissenting:

The majority states that it does not find the ordinance to be unconstitutional on its face, but it concludes that the ordinance was unconstitutional as applied to these defendants. That conclusion is founded on the premise that the defendants' conduct was part of a psychiatratically prescribed program to prepare them for sex-reassignment surgery. The only testimony in support of the defendants' claim was that of the defendants themselves. No psychiatrist was called to testify that the defendants had been diagnosed as transsexuals or that cross-dressing had been prescribed as preoperative therapy. No letter or statement was offered in evidence. Neither defendant named the psychiatrist from whom he was receiving treatment. *535 Indeed, the defendant Wilson, on cross-examination, testified that he didn't know what sex-reassignment surgery would involve and said he did not know the doctor who would perform it.

The majority ignores a basic consideration that the credibility to be given the defendants' testimony was for the trial judge and proceeds to discuss therapy in preparation for sex-reassignment surgery. That is a subject of sensitivity and importance, but I consider it is not reached here.

UNDERWOOD and RYAN, JJ., join in this dissent.

Ill., 1978.
City of Chicago v. Wilson
75 Ill.2d 525, 389 N.E.2d 522, 27 Ill.Dec. 458, 12 A.L.R.4th 1242

END OF DOCUMENT
Illinois Vital Records Act
410 ILCS 535/17

Sec. 17. (1) For a person born in this State, the State Registrar of Vital Records shall establish a new certificate of birth when he receives any of the following:

(a) A certificate of adoption as provided in Section 16 or a certified copy of the order of adoption together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court ordering the adoption, the adoptive parents, or the adopted person.

(b) A certificate of adoption or a certified copy of the order of adoption entered in a court of competent jurisdiction of any other state or country declaring adopted a child born in the State of Illinois, together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court ordering the adoption, the adoptive parents, or the adopted person.

(c) A request that a new certificate be established and such evidence as required by regulation proving that such person has been legitimated, or that the circuit court, the Department of Healthcare and Family Services (formerly Illinois Department of Public Aid), or a court or administrative agency of any other state has established the paternity of such a person by judicial or administrative processes or by voluntary acknowledgment, which is accompanied by the social security numbers of all persons determined and presumed to be the parents.

(d) An affidavit by a physician that he has performed an operation on a person, and that by reason of the operation the sex designation on such person's birth record should be changed. The State Registrar of Vital Records may make any investigation or require any further information he deems necessary.

Each request for a new certificate of birth shall be accompanied by a fee of $15 and entitles the applicant to one certification or certified copy of the new certificate. If the request is for additional copies, it shall be accompanied by a fee of $2 for each additional certification or certified copy.

(2) When a new certificate of birth is established, the actual place and date of birth shall be shown; provided, in the case of adoption of a person born in this State by parents who were residents of this State at the time of the birth of the adopted person, the place of birth may be shown as the place of residence of the adoptive parents at the time of such person's birth, if specifically requested by them, and any new certificate of birth established prior to the effective date of this amendatory Act may be corrected accordingly if so requested by the adoptive parents or the adopted person when of legal age. The social security numbers of the parents shall not be recorded on the certificate of birth. The social security numbers may only be used for purposes allowed under federal law. The new certificate shall be substituted for the original certificate of birth:

(a) Thereafter, the original certificate and the evidence of adoption, paternity, legitimation, or sex change shall not be subject to inspection or certification except upon order of the circuit court or as provided by regulation. If the new certificate was issued subsequent to an adoption, the original certificate shall not be subject to inspection until the adopted person has reached the age of 21; thereafter, the original certificate shall be made available as provided by Section 18.1b of the Adoption Act.
(b) Upon receipt of notice of annulment of adoption, the original certificate of birth shall be restored to its place in the files, and the new certificate and evidence shall not be subject to inspection or certification except upon order of the circuit court.

(3) If no certificate of birth is on file for the person for whom a new certificate is to be established under this Section, a delayed record of birth shall be filed with the State Registrar of Vital Records as provided in Section 14 or Section 15 of this Act before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed record shall not be required.

(4) When a new certificate of birth is established by the State Registrar of Vital Records, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this State shall be transmitted to the State Registrar of Vital Records as directed, and shall be sealed from inspection except as provided by Section 18.1b of the Adoption Act.

(5) Nothing in this Section shall be construed to prohibit the amendment of a birth certificate in accordance with subsection (6) of Section 22.

(Source: P.A. 97-110, eff. 7-14-11.)
IN THE CIRCUIT OF COOK COUNTY, ILLINOIS
FIRST MUNICIPAL DISTRICT, DOMESTIC VIOLENCE DIVISION

PEOPLE OF THE STATE OF ILLINOIS )

v. ) No. 08-XXXXX

XX XXXX ) Branch XX

Defendant )

MOTION

NOW COMES the Defendant, Ms. XXXX, by and through her attorney, Owen Daniel-McCarter, and moves this Honorable Court to conduct court proceedings in accordance with, and with respect for, the Defendant’s gender identity and in support of this motion state as follows:

1. The Defendant, Ms. XXXX is a transgendered woman.

2. Ms. XXXX has been living as a woman for several years, and is known to her family and her community as a woman.

3. In accordance with her gender identity, Ms. XXXX uses female pronouns, such as “she” and “her”, as well as female salutations and titles, such as “Ms.”

4. Recognizing a need to combat the effects of bias and bigotry facing transgendered people, since 2002 the Cook County Human Rights Ordinance has prohibited discrimination on the basis of gender identity in a variety of arenas, including County services and public accommodations. Ordinance No. 93-0-13.
5. This county ordinance states that "Gender identity" means the actual or perceived appearance, expression, identity, or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person’s designated sex at birth. Ordinance No. 93-0-13 I(H). The Cook County Human Rights Ordinance further states, "no person shall engage in unlawful discrimination in the provision or distribution of any Cook County facilities, services, or programs." Ordinance No. 93-0-13 VII(A).

WHEREFORE, the Defendant, Ms. XXXX, respectfully moves this Court to conduct court proceedings in accordance with Ms. XXXX’s gender identity by using female pronouns "she" and "her."

Respectfully Submitted,

Owen Daniel-McCarter, Esq.
Attorney Number ####

ADDRESS
PHONE NUMBER

Dated: July 30, 2008
I. PURPOSE

This directive:

A. establishes policies for interactions with transgender, intersex, and gender nonconforming (TIGN) individuals to provide for their safety. Consistent with the General Order entitled *Human Rights and Human Resources,* Department members will:

1. treat all persons with the courtesy and dignity which is inherently due every person as a human being. Department members will act, speak, and conduct themselves in a professional manner, recognizing their obligation to safeguard life and property, and maintain a courteous, professional attitude in all contacts with the public.

2. not exhibit any bias, prejudice, or discriminate against a TIGN individual or group of TIGN individuals.

B. defines certain terms which pertain to processing TIGN persons under Department control.

C. establishes procedures for processing TIGN arrestees under Department control.

II. DEFINITIONS

A. **Cross-Dresser** – A term that refers to people whose dress is typically associated with the opposite sex.

B. **Gender Identity or Expression** – The actual or perceived identity or behavior of a person as being male or female.

C. **Intersex** – A group of conditions where there is a discrepancy between the external genitalia and the internal genitalia (testes and ovaries).

D. **Sexual Orientation** – An individual’s enduring romantic, emotional, and/or sexual attraction to individuals of a particular gender.

E. **Transgender** – Refers to any person whose gender identity or expression differs from the one which corresponds to the person’s sex at birth. This term includes transsexuals, intersex individuals, and others whose identity are perceived to be gender nonconforming.

F. **Transsexual** – A person whose personal sense of their gender conflicts with their anatomical sex at birth.
III. GUIDING PRINCIPLES

A. Members will:

1. respectfully treat TIGN individuals in a manner appropriate to the individual’s gender expression;

2. use pronouns as requested by the TIGN individual (e.g., “she, her, hers” for an individual who self-identifies as a female; “he, him, his” for an individual who self-identifies as a male);

   **NOTE:** If members are uncertain by which gender the individual wishes to be addressed, members will respectfully ask the individual for clarification.

3. when requested, address a TIGN individual by a name based on their gender identity rather than that which is on their government-issued identification;

4. conduct field and strip searches as delineated in the Department directive entitled “Conducting Field and Strip Searches.”

   **NOTE:** A field search is defined in the Department directive entitled “Interrogations: Field and Custodial.”

B. Members will not:

1. stop, detain, frisk, or search any person in whole or in part for the purpose of determining that person’s gender or in order to call attention to the person’s gender expression;

   **NOTE:** The above limitation does not prevent a member from following the established Department procedures relative to ensuring the proper processing of arrestees.

2. use language that a reasonable person would consider demeaning or derogatory, in particular, language aimed at a person’s actual or perceived gender identity or expression or sexual orientation;

3. consider a person’s gender identification as reasonable suspicion or prima facie evidence that the individual is or has engaged in a crime, including prostitution;

4. disclose an individual’s TIGN identity to other arrestees, members of the public, or non-Department members, absent a proper law enforcement purpose.

C. Members will not unreasonably endanger themselves or another person to conform to this directive.

IV. GENDER CLASSIFICATION OF TIGN ARRESTEES FOR DEPARTMENT PURPOSES

A. An arrestee’s gender will be classified as it appears on the individual’s government-issued identification card.
NOTE: The Illinois Secretary of State designates the gender on an identification card based upon appropriate documentation submitted to the Secretary of State.

B. The exception to the government-issued identification card policy are those arrestees who are post operative gender re-assigned from:

1. male-to-female will be processed as a female;

2. female-to-male will be processed as a male.

C. In the event that a government-issued identification card is unavailable the following criteria will be used in determining gender:

If the arrestee states they:

1. have male genitalia, the arrestee will be classified as a male;

2. do not have male genitalia, the arrestee will be classified as a female.

D. In the event that there is uncertainty regarding the appropriate classification of an arrestee’s gender, a supervisor will be consulted for further guidance on the appropriate classification.

V. PROCEDURES INVOLVING TIGN ARRESTEES

A. Searches of TIGN Individuals

1. Field searches will be conducted by a member who is the same gender as the arrestee based on the gender guidelines as delineated in Item IV of this directive and in accordance with established Department procedures. A field search is defined in the Department directive entitled "Interrogations: Field and Custodial."

   EXCEPTION: If a member of the same gender is not immediately available, officer or public safety is compromised, and it is imperative that an immediate search be conducted, members will not endanger themselves or the public to comply with this requirement.

2. Members taking TIGN individuals into custody, accepting custody from other members, or conducting custodial and/or strip searches of TIGN individuals will be responsible for conducting a thorough search in accordance with established Department procedures.

   a. The gender of the Department member(s) performing custodial searches of TIGN individuals, including custodial searches incident to arrest, prior to transport, and within a designated holding facility, will be based on the gender guidelines as delineated in Item IV of this directive.

   b. When requested by a TIGN individual, a Department member of the TIGN individual’s gender identity or expression will be present to observe the custodial search. When practical, this observing member will be a sworn supervisor.
3. Members will not conduct more frequent or more invasive searches of TIGN individuals than other individuals.

4. Requests to remove identity-related items such as prosthetics, clothing, wigs, and cosmetic items will be consistent with requirements for the removal of similar items for non-TIGN arrestees.

5. The possession of a needle which is purported to be for hormonal use will not be presumed to be evidence of criminal misconduct, especially, if the person being stopped or arrested has documentation from a physician for being in the process of a sex change.

B. Whenever practical, TIGN arrestees will be transported alone in a passenger vehicle, van cell, or squadrol compartment.

1. When requested by a TIGN individual, a Department member of the TIGN individual's gender identity or expression will be present during the transport.

2. When requested by a TIGN arrestee being transported from a holding facility to a court, the TIGN arrestee will be transported separately from the male and female transports.

3. In situations with multiple TIGN arrestees, mass arrests, where a member of the TIGN individual's gender identity or expression is unavailable, or where individual transport is not practical, TIGN arrestees will be transported by gender classification, as outlined in this directive.

C. The designated holding facility of TIGN arrestees will be Central Detention.

1. Upon completion of the preliminary investigation, TIGN arrestees will be fingerprinted and photographed in the district of arrest's designated holding facility before being transported to Central Detention consistent with the procedures outlined in the Department directive "Field Arrest Procedures."

2. The designated lock-up in Central Detention will be based on the TIGN arrestee's gender classification, as delineated in this directive.

3. Whenever practical, TIGN arrestees will be maintained in single cell occupancy.

D. Members will record TIGN individual's gender information on Department reports in accordance with Item IV of this directive and all other demographic information as it appears on their government-issued identification. Any name used by the subject other than what is listed on their government-issued identification will be recorded as an alias.

E. In the event a TIGN individual requires immediate medical care or medication, including hormone therapy, it will be provided in the same manner as any other person under Department control. The subject will be transported to the nearest approved emergency room, as delineated by the Department directive entitled. "Approved Medical Facilities," prior to any further arrest processing.

F. If an individual explicitly informs a member that they are a TIGN person, a member finds a record for an individual (LEADS, NCIC, or any other law enforcement record) that lists a different gender from what the individual is currently presenting, or a
member observes that a person is presenting a gender which is different than their
gender classification, the member shall notify the lockup keeper before delivering the
individual into their custody. The lockup keeper will document the information in the
"Arrestee Questionnaire" section on the Arrest Report and in the "Lock-Up Keeper
Comments" section by entering:

1. "TIGN Arrestee, male presenting as a female," or

2. "TIGN Arrestee, female presenting as a male."

G. In situations involving the transfer of TIGN prisoners (e.g., Cook County Jail, other
police agencies), the lockup keeper will ensure that the paperwork accompanying the
prisoner adequately describes gender identity related issues.

VI. CONFLICT PROVISION

If this directive conflicts with any Department directive, this directive will take precedence.

Garry F. McCarthy
Superintendent of Police

11-136 MAV/JKH/MWK
I. PURPOSE

This Interagency Directive establishes guidelines and procedures for housing, clothing, commissary, showering, grooming, recreation, programming, escort, transportation, searches and other matters involving the custody and the safety and security of inmates with gender identity disorder.

II. POLICY

It is the policy of the Cook County Department of Corrections (CCDOC) to provide a safe and secure environment for all inmates who identify themselves as transgender or who are identified by Cermak Health Services of Cook County (Cermak) as having gender identity disorder, and to uphold the respect and dignity of these, and all, inmates at the CCDOC. This policy is a component of the CCDOC Prison Rape Elimination (PREA) Policy and thereby requires zero tolerance for discrimination on the basis of sexual orientation, including verbal or physical harassment or abuse of transgender inmates by other inmates or by CCDOC employees.

III. AUTHORITY

A. United States Constitution, Eighth Amendment

B. United States Constitution, Fourteenth Amendment

C. Illinois Human Rights Act, 775 ILCS 5/1-102

D. Prison RapeElimination Act (PREA) of 2003

E. Title 20, Section 701.70 Administrative Code, Classification and Separation

F. American Psychiatric Association Diagnostic and Statistical Manual, Fourth edition

G. Health Insurance Portability and Accountability Act (HIPAA) of 1996
INTERAGENCY 64.5.43.0

IV. AMERICAN CORRECTIONAL ASSOCIATION REFERENCE

4-ALDF-2A-25, 29, 30, 31, 32, 34
4-ALDF-6B-02

V. DEFINITIONS

A. Accommodation Plan – A plan constructed by the Gender Identity Committee for an individual inmate with gender identity disorder that shall include instructions regarding issues including, but not limited to housing, clothing, showering, grooming, recreation, programming, escort, transportation, and searches.

B. Gender Identity or Gender-Related Identity – Gender identity is a person’s internal sense of being male or female. It is not necessarily based on the individual’s anatomical sex at birth or on the individual’s sexual orientation. An individual’s gender identity is the result of genetics and environmental influences. It may be manifested in appearance, behavior, or other aspects of the person’s life.

C. Gender Identity Disorder (also termed transsexualism) – Gender Identity Disorder is a specific mental disorder, in which a person evidences all of the diagnostic criteria for this condition, as listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV):

1. Strong and persistent desire to be a member of the opposite sex;
2. Persistent discomfort with his/her sex or sense of inappropriateness in the gender role of that sex;
3. Clinically significant distress or impairment in social, occupational, or other important areas of functioning;
4. Absence of evidence for intersex.

D. Intersex (also termed Disorder of Sexual Development or DSD and also, in the past, hermaphroditism) - Intersex is a congenital condition in which development of chromosomal, gonadal, or anatomical sex is atypical. Gender identity disorder and intersex are separate and distinct clinical entities. However, some individuals with gender identity disorder may incorrectly represent themselves as intersex and vice versa.

E. Sexual Orientation – Sexual orientation is a pattern of sexual attraction to males, females, both, or neither. Sexual orientation and gender identity are separate and distinct concepts.
F. Transgender person – A transgender person is an individual whose gender identity and outward gender expression differ from the physical characteristics of his/her birth gender. A person can be transgender without meeting the criteria and definition of gender identity disorder.

VI. PROCEDURE

A. Identification of Inmates with Gender Identity Disorder

If during the initial screening process, an inmate’s gender identity is in question via verbal or written notification from the inmate or the arresting police agency, or upon reasonable suspicion that the inmate has gender identity disorder or is a transgender person; the following procedures are followed prior to the housing assignment:

1. The inmate shall be separated and secured in a designated area from the general population.

2. The classification officer shall notify his/her supervisor.

3. The classification officer or his/her supervisor shall present the inmate to Cermak for evaluation by health staff.

4. Cermak health staff shall proceed according to Cermak’s policy and procedures (Cermak Policy G-02.9) for clinical verification of gender identity, genital anatomy, and the status of any hormonal and/or surgical interventions that may be underway as part of a gender transition.

5. In any case where the inmate’s gender identity and genital anatomy are clinically verified to be different than that reported by the arresting police agency, the CCDOC shall notify the arresting police authority of any misidentification of the individual immediately after the clinical verification.

B. Gender Identity Committee

1. The purpose of the Gender Identity Committee shall be to consider the case of each inmate who is clinically verified as having gender identity disorder and to recommend appropriate accommodations that shall be made for the inmate with regard to housing, clothing, commissary, showering, grooming, recreation, programming, escort, transportation, searches and other matters. The Committee shall be composed of a medical representative and a mental health representative, appointed by the Cermak Chief Medical Officer, together with a member of the CCDOC executive staff, appointed by executive director, the Sheriff’s
Medical Advocate/designee, and the Superintendent of Classification/designee.

2. If members of the committee do not agree regarding recommendations to be made for a particular inmate, the opinion of the majority shall be the deciding opinion.

3. The Committee shall retain summary notes of each meeting to document persons attending the meeting and conclusions that have been reached. One copy of these notes shall be maintained by the Committee and one copy shall be placed in the inmate’s classification file in accordance with (HIPAA) regulations.

4. If and when persons are brought to the attention of the Gender Identity Committee who do not meet clinical criteria for gender identity disorder, the Committee shall proceed as follows:

a. In the case of other clinical disorders relating to gender identity, such as intersex, the Committee may opt to formulate recommendations for an Accommodation Plan.

b. In the case of non-clinical conditions relating to gender identity and/or sexual orientation, such as homosexuality, the Committee recognizes it has the same obligation to maintain the safety and security of the inmates as it does all inmates at CCDOC. Accommodations of such persons, if any, shall be under the sole purview of CCDOC and its existing classification system.

5. In the event that the clinical definition and criteria for gender identity disorder are changed by the American Psychiatric Association in its Diagnostic and Statistical Manual of Mental Disorders, the Gender Identity Committee shall recommend appropriate changes to this Interagency Directive.

C. Accommodation Plan for an Inmate with Gender Identity Disorder

1. The Gender Identity Committee shall meet within 72 hours of the clinical verification that an inmate meets clinical criteria for the diagnosis of gender identity disorder. In preparation for this meeting, the Sheriff’s Medical Advocate shall meet with the inmate to solicit his/her preferences and requests with regard to housing, clothing, commissary, showering, grooming, recreation, programming, escort, transportation, searches and other matters. The inmate’s preferences and requests shall be considered but are not determinative.
2. At the meeting of the Gender Identity Committee, Cermak's representatives shall present clinical information pertinent to the Committee's charge. The Sheriff's Medical Advocate shall present the inmate's stated preferences and requests with regard to the Accommodation Plan. At the Committee's discretion, this meeting may also include direct conversations with the inmate and/or with treating clinicians.

3. The Gender Identity Committee shall then construct an Accommodation Plan for each individual inmate with gender identity disorder based on the physical and psychological findings on examination of that individual, and based on safety and security issues relating both to that individual inmate and to the inmate population at the CCDOC.

4. The Accommodation Plan constructed by the Gender Identity Committee for the individual inmate with gender identity disorder shall include instructions regarding issues including, but not limited to, housing, clothing, showering, grooming, recreation, programming, escort, transportation, and searches.

5. In its deliberations, the Gender Identity Committee must ensure that the dignity and respect of the inmate with gender identity disorder are always taken into consideration.

6. The Gender Identity Committee shall notify the Assistant Executive Director (or, outside of regular duty hours, the administrative duty officer) in writing of its recommendations. The Assistant Executive Director (or, outside of regular duty hours, the administrative duty officer) shall in turn notify appropriate personnel at CCDOC. Cermak's representatives on the Gender Identity Committee shall notify appropriate personnel at Cermak.

7. The Gender Identity Committee shall meet to review the Accommodation Plan as needed and at intervals of not more than every 3 months. More frequent meetings may be mandated by individual inmate medical concerns, inmate request, or any other concerns related to Accommodation Plans. In preparation for this meeting, the Sheriff's Medical Advocate shall meet with the inmate to solicit his/her preferences and requests with regard to housing, clothing, commissary, showering, grooming, recreation, programming, escort, transportation, searches and other matters. The Sheriff's Medical Advocate shall then present to the Committee a summary of the inmate's expressed satisfaction regarding the Accommodation Plan that has been in place. Cermak's representatives shall then present any follow-up clinical information pertinent to the Committee's charge. At the Committee's
discretion, this meeting may also include direct conversations with the inmate and/or with treating clinicians.

D. CCDOC Procedures For Following Recommendations of the Gender Identity Committee

1. The Assistant Executive Director (or, outside of regular duty hours, the administrative duty officer) shall notify the superintendent of the division where the inmate is to be housed of the recommendations made by the Gender Identity Committee and the superintendent in turn shall notify line staff.

2. CCDOC personnel shall follow the recommendations outlined in the inmate’s individual Accommodation Plan written by the Gender Identity Committee for the housing, clothing, commissary, showering, grooming, recreation, programming, escort, transportation, searches, and other matters involving the custody and the safety and security of inmates with gender identity disorder.

3. If a CCDOC employee identifies a safety or security risk posed by the Accommodation Plan recommended by the Gender Identity Committee, he or she must inform the Gender Identity Committee directly, or must notify his/her supervisor, and that supervisor must notify the Gender Identity Committee, that the Accommodation Plan poses a safety or security risk. The Gender Identity Committee shall review the case, and shall make adjustments to the Accommodation Plan, if necessary. In the case of an immediate threat to the safety or security of the inmate the CCDOC employee or supervisor should notify the Assistant Executive Director or designee for approval to make temporary change to Accommodation Plan. The Gender Identity Committee must approve a permanent change to the Accommodation Plan.

4. An inmate with gender identity disorder shall be called by his/her last name, consistent with CCDOC policy regarding inmates in general.

5. An inmate with gender identity disorder shall be allowed to possess those hygiene and personal items that may be purchased through commissary that are consistent with the recommendations of the Gender Identity Committee.

6. To the extent that strip and pat-down searches are permitted for security purposes, said searches of an inmate with gender identity disorder shall only be made by correctional officers of the gender recommended by the Gender Identity Committee.
7. An inmate with gender identity disorder shall be housed in Protective Custody or Administrative Segregation only when there is reason to believe the inmate presents a heightened risk to self or others, or if there is an immediate risk of harm to the inmate by other inmates. This placement shall be for such limited periods of time during which the heightened security risk exists.

8. While in Protective Custody or Administrative Segregation, an inmate with gender identity disorder shall not be deprived of access to educational, vocational or other program services available to other inmates in special housing.

E. Gender Identity Disorder Training

The CCSO Training Institute staff shall provide training to officers and supervisory staff in gender identity disorder sensitivity and the role of the Gender Identity Committee in formulating Accommodation Plans. All officers must successfully complete and be certified in the prescribed course administered by the CCSO Training Institute.

VII. APPLICABILITY

This order is applicable to all Cook County Department of Corrections and Cermak Health Services of Cook County employees and is for strict compliance.

BY ORDER OF:

[Signature]

SALVADOR GODINEZ
EXECUTIVE DIRECTOR
COOK COUNTY DEPARTMENT OF CORRECTIONS

[Signature]

MICHAEL PUISIS
CHIEF OPERATING OFFICER
CERMAK HEALTH SERVICES OF COOK COUNTY
I. POLICY

A. Authority

730 ILCS 5/3-2-2, 5/3-7-2 and 5/3-8-2

B. Policy Statement

The Department shall:
- provide appropriate accommodations and treatment for all offenders who are identified as having gender identity issues, or who are diagnosed by the Department as having a gender identity disorder; and
- extensively evaluate offenders at a Reception and Classification Center to ensure appropriate facility placement.

II. PROCEDURE

A. Purpose

The purpose of this directive is to establish a written procedure for conducting medical and mental health examinations of offenders with gender identity disorders and to address adjustment to the prison environment related to the disorder throughout their incarceration.

B. Applicability

This directive is applicable to facilities within the Department.

C. Facility Review

A facility review of this directive shall be conducted at least annually.

D. Designees

Individuals specified in this directive may delegate stated responsibilities to another person or persons unless otherwise directed.
E. **Definitions**

Gender identity — a person’s internal sense of being male or female regardless of anatomical genitalia at birth or sexual orientation. Gender identity is a result of genetics and environmental influences and may be manifested by appearance, behavior or other aspects of the individual’s lifestyle.

Gender identity disorder — a specific mental health disorder characterized by a manifestation of all DSM-IV diagnostic criteria, including, a strong and persistent desire to be a member of the opposite gender; persistent discomfort with his or her gender or a sense of inappropriateness with the gender role; clinically significant distress or impairment in occupational, social or other important areas of functioning; and absence of evidence of intersex (hermaphroditism) whereby a congenital disorder in which the development of chromosomal or anatomical sex is atypical.

**NOTE:** The offender may have had cosmetic or other surgery to enhance appearance, undergone hormonal therapy, and frequently lived as a person of the opposite gender in the free community in spite of genetically being a male or female. A transvestite (cross-dresser) or non-transsexual homosexual is not considered a person with a gender identity disorder for purposes of this directive.

Sexual orientation: a pattern of sexual attraction to a specific gender or genders or lack of sexual attraction to a specific gender or genders.

**NOTE:** Sexual orientation and gender identity are distinct and separate concepts.

F. **General Provisions**

1. In accordance with Administrative Directive 05.07.101, all offenders shall undergo a detailed medical history, physical examination and mental health examination during the reception and classification process. Offenders self-identified as or suspected of having a gender identity disorder shall undergo the above within 24 hours of arrival at Reception and Classification (R&C).

2. The Department shall not perform or allow the performance of any surgery for the specific purpose of gender change, except in extraordinary circumstances as determined by the Director who has consulted with the Agency Medical Director. Offenders who may have gender identity issues shall be informed of this policy by the Facility Medical Director.

3. Hormone therapy shall require prior approval of the Agency Medical Director.

G. **Gender Identity Disorder Committee (GIDC)**

1. The Agency Medical Director shall establish and head a committee for the purpose of reviewing placements, security concerns and overall health-related treatment plans of offenders with gender identity disorders; and to oversee the gender related accommodation needs of these offenders. At a minimum, the committee shall be comprised of the:
a. Agency Medical Director (no designee);

b. Chief of Mental Health (no designee);

c. Transfer Coordinator; and

d. Chief of Operations.

2. The committee shall meet within 30 days of the admission of an offender who presents with gender identity issues to his or her parent facility to make final recommendations.

3. Additional follow-up meetings shall be scheduled on an as needed basis.

H. Requirements

1. The Chief Administrative Officer shall establish and maintain a written procedure for detailed medical and mental health examinations to be conducted during the reception and classification process for any offender who is self-identified or diagnosed with a gender identity disorder. The procedure shall provide for the following:

   a. Medical History

      (1) As part of the detailed medical history obtained from the offender by a physician, including information about past illnesses and family medical history, the physician shall also elicit information about:

         (a) Sexual activity, specifically homosexual, heterosexual or bisexual activity;

         (b) Previous operative procedures; and

         (c) Hormone therapy.

      (2) The physician shall also ask the offender questions that would:

         (a) Illuminate the offender's own sense of gender identity;

         (b) Reveal any plans the offender may have with regard to future surgery and life style; and

         (c) Reflect whether the offender has amended or plans to amend the original birth certificate.

   b. Physical Examination

      (1) As part of the detailed physical examination, specific attention shall be given to the genitalia.
(a) Offenders shall be examined in the standing position as well as on an examining table.

(b) The physical examination report shall include a concise description of the present genitalia.

(2) If possible, the physician shall contact the physician who was managing the offender's gender related treatment prior to incarceration for verification of the course of treatment and to obtain relevant medical records.

(3) The Facility Medical Director shall inform the offender of the Department's policy regarding gender reassignment surgery. Hormone therapy shall only be provided after consultation with and approval by the Agency Medical Director.

c. Mental Health Examination

(1) As part of the mental health examination, a psychiatrist shall evaluate the offender using the DSM-IV criteria to determine if he or she has a gender identity disorder and determine:

(a) The offender's competency;

(b) The offender's sexual activity, sexual preference and current gender identification;

(c) The regularity and history of legitimate prescribed hormone therapy; and

(d) The presence or absence of any counseling activities and goals prior to incarceration.

(2) A vulnerability or predatory risk assessment shall be completed.

2. Upon conclusion of the medical history and physical examination:

a. The R&C Facility Medical Director shall telephone to the Agency Medical Director the results of the history and physical examination including:

(1) Anatomical description;

(2) Preference for sexual partners; and

(3) History of any medical or surgical treatment received for the gender identity disorder, including hormone therapy or gender reassignment surgery.
b. The Agency Medical Director shall make his or her preliminary determination of gender and recommendations, including, but not limited to, housing, showering restrictions and hormone therapy.

c. Upon receipt, the R & C Facility Medical Director shall:

(1) Document the determination of gender and the any recommendations of the Agency Medical Director in the progress notes of the medical record; and

(2) Notify the Health Care Unit Administrator and Mental Health Administrator of the offender's gender and the preliminary recommendations of the Agency Medical Director.

3. The Health Care Unit Administrator shall notify the Supervisor or Administrator of the R & C of the determination of the offender's gender.

4. The Supervisor or Administrator of the R & C shall ensure the offender is housed in accordance with the offender's gender-related needs.

5. Within 30 days of an offender arriving at his or her assigned parent facility:

a. A mental health professional shall complete a social history interview and review any relevant documentation regarding real-life experience the offender may have had in the gender role of the opposite gender. The history shall include, but may not be limited to, the offender's experiences in social situations such as employment, efforts to legally change his or her name, hormone therapy and gender reassignment surgery or procedures for preparation for surgery, and experiences during any previous incarcerations, if applicable.

b. The GIDC shall review the case and make the final recommendation for housing and any additional matters that may be of issue such as, but not limited to, hormone therapy, clothing, showers, searches, etc. The review and recommendations shall be documented on the Gender Identity Disorder Committee Recommendation, DOC 0400.

6. The GIDC shall conduct follow-up reviews on an as needed basis.

Authorized by:

S.A. Godinez
Director

Supersedes:
04.03.104         AD         5/1/2003